DOCUMENT RESUME

ED 248 180 SO 015 882

AUTHOR Hanna, Jack C.
TITLE Ways of the Law. Lesson Guide.
INSTITUTION South Carolina Educational Television Network Columbia.; South Carolina State Dept. of Education, Columbia.
PUB DATE Sep 80
NOTE 146p.; Photographs and sample legal forms may not reproduce clearly.
PUB TYPE Guides - Classroom Use - Guides (For Teachers) (052)

EDRS PRICE MF01/PC06 Plus Postage.
DESCRIPTORS *Citizenship Education; Constitutional Law; Court Litigation; Criminal Law; Due Process; High Schools; Law Enforcement; *Laws; *Legal Education; Legal Problems; Units of Study
IDENTIFIERS Juvenile Justice; *Law Related Education

ABSTRACT

Designed to acquaint high school students with those areas of the law that they are most likely to come in contact with, this series of 15 lessons can be used in government, citizenship, law, family living, and economics classes. Although originally developed to be used with a television series, the document can be adapted to other uses. Following an overview, the lesson guide discusses sources of law, reasons for law, and criminal procedure. The remaining eleven units deal with specific legal topics, presenting separate sections on substantive criminal law, the citizen's role in law enforcement, law enforcement by patrol officers, juvenile justice, family law (domestic relations), wills and estates, contract/consumer law, civil law, environmental law, due process, and the legal system. Each lesson begins with a situational description of a legal case from which a number of related activities and case examples evolve. Most units present objectives, lesson content, pre- and post-telecast activities, issues for discussion, correlative literature, related statutes and cases, and vocabulary and related concepts. The use of attorneys and other legal personnel is encouraged as a way of supplementing the lessons with initial introductions or follow-ups. Where appropriate, sample legal forms are presented. (LH)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED248180

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

This document has been reproduced as received from the person or organization originating it.

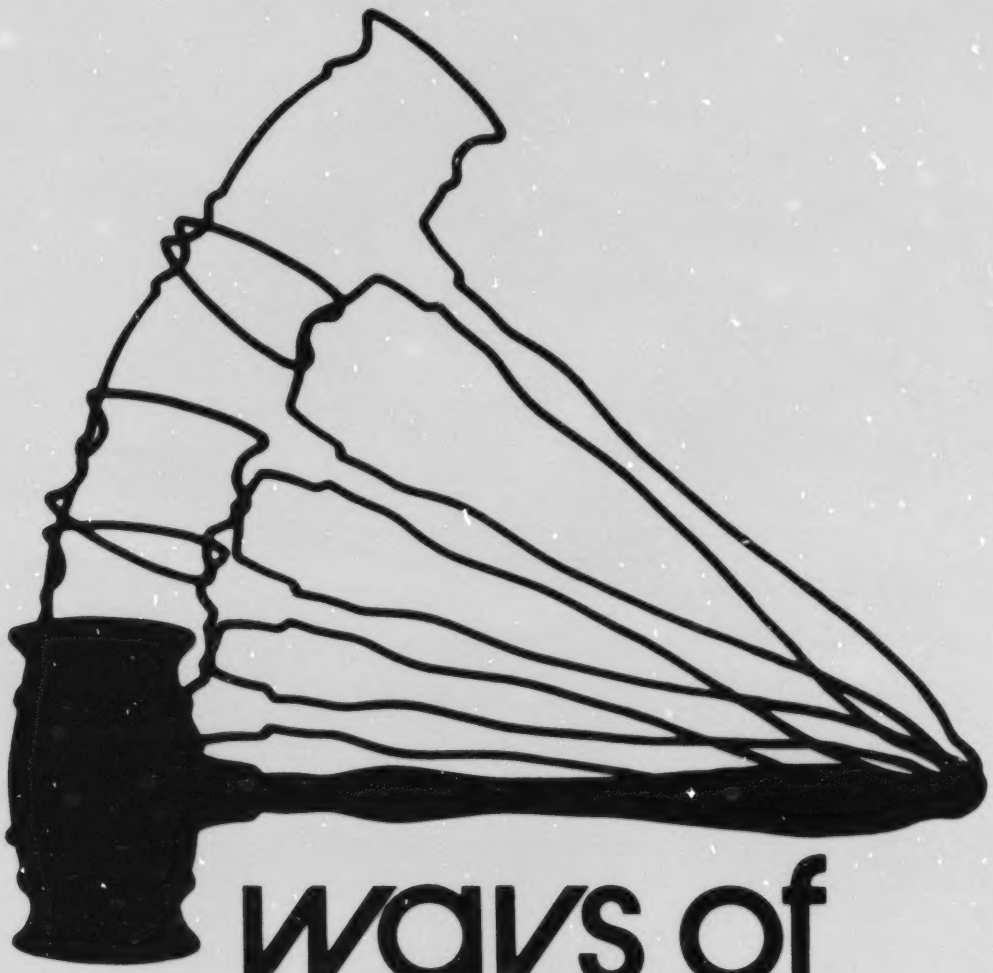
X Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Jack C. Hanna

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."



ways of THE LAW

lesson guide

SO 015 882

Author: Jack C. Hanna

Written: September 1980

This document was published as a joint effort of the South Carolina State Department of Education and the South Carolina Educational Television (ETV) Network.

Printed and Distributed by the South Carolina ETV Network

PICA

WAYS OF THE LAW

TABLE OF CONTENTS

		Page
Introduction		1
Advisory Committee		2
Lesson 1	Overview of Series	3
Lesson 2	Sources of Law	6
Lesson 3	Reasons For Law ("Le Cafe Politic")	14
Lesson 4	Criminal Procedure (Time for Not Thinking)	24
Lesson 5	Substantive Criminal Law (Happy Here)	33
Lesson 6	Law Enforcement (The Citizen's Role)	38
Lesson 7	Law Enforcement (Patrol Officers)	42
Lesson 8	Family Law (Juvenile Justice)	45
Lesson 9	Family Law (Domestic Relations)	56
Lesson 10	Wills and Estates	65
Lesson 11	Contract/Consumer Law (Be Assertive)	79
Lesson 12	Civil Law (What Really Happened?)	89
Lesson 13	Environmental Law	96
Lesson 14	Due Process (Student Rights and Responsibilities)	115
Lesson 15	Our Legal System	123

INTRODUCTION

WHAT?

Ways of the Law is a series of 15 lessons. Each is approximately twenty minutes in length. Four of the programs are general in nature and eleven of them deal with specific legal topics. The series is designed to acquaint high school students with those areas of the law that they are likely to come in contact with not only as adults, but also as teenagers. Ways of the Law is intended for use in Government, Citizenship, Law, Family Living and Economics classes. It is anticipated that attorneys and other legal personnel (i.e. judges, policemen, clerks of court) will be called upon by teachers to supplement the lessons with initial introductions or follow-ups.

WHY?

The law has substantive and educational value. Clearly, Law's persuasive determinitive role in our individual, institutional, and social lives warrants its study throughout the school curriculum. Almost equally significant, however, is the Law's potential in promoting critical thinking, clarifying divergent values and interests and illuminating such disciplines as political science, history, sociology, philosophy, family living and economics.

Law dispute resolution is replete with actual, honest, inescapable conflicts and controversies. The study of Law thus discourages simplistic responses to complex problems. Rather, students must identify relevant facts, articulate central issues, explore various alternatives in light of established principles and possible consequences, and trouble over solutions. The study of law also promotes a spirit of inquiry which lends itself to various effective instructional techniques-- such as case studies, role-playing and field experiences -- which allows students the opportunity to develop their intellectual capabilities while relating affectively to various perceptions and interests involved.

HOW?

Most of the instructional information in these programs will go in one ear and out of the other without appropriate pre and post telecast activities because learning about law is similar to learning a foreign language. Students and teachers must master a host of new vocabulary and concepts in order to understand the inner workings of; history of; the changing nature of, and the forces and ideas which bring about changes in our legal system. Ways of the Law will deliver to you fifteen programs about law, each only an appetizer in the legal feast the teacher can create around the series. The lesson guide for each program contains more than enough activities with which the teacher can satisfy her students' hunger for knowledge about law. Undoubtedly, you and the legal personnel upon whom you call will develop your own activities to supplement the lessons.

Please feel free to contact me concerning your views on the effectiveness of the series in your particular teaching situation. If I can be of any assistance to you, please write or call:

Jack C. Hanna
Project Director
Ways of the Law
2712 Millwood Avenue
Columbia, S. C. 29250

Phone: (803) 758-7301

WAYS OF THE LAW.

ADVISORY COMMITTEE

LAWYER MEMBERS FOR WAYS OF THE LAW ADVISORY COMMITTEE

Palmer Freeman, Jr., Esquire
Mack & Mack
Post Office Box 128
Fort Mill, South Carolina 29715

J. Rutledge Young, Jr., Esquire
Young, Clement & Rivers
Post Office Box 993
Charleston, South Carolina 29402

D. Laurence McIntosh, Esquire
Wright, Scott, Blackwell & Powers
Post Office Box 1831
Florence, South Carolina 29503

The Honorable Willie T. Smith, Jr.
Family Court Judge
13th Judicial Circuit
Post Office Box 757
Greenville, South Carolina 29602

John F. Shuler, Esquire
Bryant, Fanning & Yarborough
358 St. Paul Street, NE
Orangeburg, South Carolina 29115

Mrs. Adele J. Pope
Attorney at Law
McKay, Sherrill, Walker & Townsend
Post Office Drawer 447
Columbia, South Carolina 29202

Sherwood M. Cleveland, Esquire
McKay, Sherrill, Walker & Townsend
Post Office Drawer 447
Columbia, South Carolina 29202

Marion O. Hanna,
Esquire
107 Harden Street
Columbia, South Carolina 29205

EDUCATOR MEMBERS FOR WAYS OF THE LAW ADVISORY COMMITTEE

LeGrande A. Rouse, II
State Social Studies Consultant
State Department of Education
1006 Rutledge Building
Columbia, South Carolina 29201

Dr. Hunter Draper
Coordinator of Social Studies
Charleston County Schools
3 Chisolm Street
Charleston, South Carolina 29401

Howard Thomas
Social Studies Consultant
801 Rutledge Building
Columbia, South Carolina 29201

Mrs. Guynell Jones
Social Studies Teacher &
President Elect of S.C. Social
Studies Council
Pacolet Junior High School
Pacolet, South Carolina 29372

Dr. Eugene Hardin
Professor of Education, Wardlaw College
School of Education
University of South Carolina
Columbia, South Carolina 29208

James H. Foster
Associate Superintendent
Horry County Schools
P. O. Drawer 680
Conway, South Carolina 29526

Mrs. Judy Brasington
Social Studies Teacher
Butler High School
S. Sixth Street
Hartsville, South Carolina 29550

Harvey S. Teal
Chief Supervisor of Resource Development
Office of Instructional Television & Radio
State Department of Education
Columbia, South Carolina 29201

WAYS OF THE LAW

LESSON 1

INTRODUCTION

Jack C. Hanna
Ways of the Law Project Director
Instructional Specialist
Office of ITV&Radio
South Carolina Department of Education

Anthony S. Jacobs
Ways of the Law Director
Production Department
South Carolina Educational Television

Ways of The Law

Lesson 1
Overview of Series

I. OBJECTIVES:

Students and teachers will understand how to utilize the series. Students and teachers will preview segments from many of the programs in the series.

II. CONTENT OF LESSON:

This lesson contains segments from several of the programs in the series. Jack Hanna, Project Director for Ways of the Law explains the series and gives suggestions on how to use it.

III. UTILIZATION:

Before the Telecast:

A. Have students discuss ways that a lack of knowledge of law can cause problems in an individual's life (e.g. not knowing what the speed limit is.)

After the Telecast:

A. Hold an open discussion on what students viewed and what they hope to gain from the series.

B. Encourage the daily reading in newspapers and other publications of stories and materials related to Law.

C. Set up a bulletin board and ask students to bring the materials mentioned above and post them for the benefit of the entire class. Assign several students the task of keeping the board current and neatly structured.

D. Have each student identify some facit or facility of Law that he or she will report on later. In a few weeks have the topics submitted for approval and set a schedule for the presentation of these reports.

E. In order to look up the cases and statutes we have cited for you, a few words of explanation are necessary. The name of the case is followed by numbers and letters. These tell you the volume, the name of the Reporter and the page on which the case begins. Usually, the date of the case follows in parentheses.

Example: 88 U.S. 427 (19__)

88 — Volume
U.S. — United States Reports
427 — Page
(19__) — date

Abbreviations:

U. S.	United States Reports (Official)
L.Fd (2d)	United States Supreme Court Reports (Lawyers Cooperative Pub. Co.)
S. Ct.	Supreme Court Reporter (West Publishing Co.)
S. C.	South Carolina Reports
S E	South Eastern Reports
F.	Federal Reporter (Contains cases from the Federal District Courts and the Court of Appeals)
F. Supp.	Federal Supplement(Contains cases from Federal District Courts and the U. S. Customs Courts.)

Statutes **(Laws passed by legislatures)**:

References are made to the 1976 edition of the Code of Laws of South Carolina. The three numbers set off by dashes refer to the title, chapter and section, respectively.

Example: 15 - 30 - 270

15 — Title
30 — Chapter
270 — Section

Title numbers are on the spine of each volume for easy location.

F. A brief of a case is the synopsis of the Court's decision in that case. The brief usually includes some or all of the following:

(1) A summary of the facts of the case

(2) A statement of the procedural posture --
the court the case is being appealed from,
the kind of case it is, and
the orders being appealed.

(3) The holding of the case

(4) The court's reasoning in so holding

(5) The result - whether affirmed or reversed

This type of brief is distinguished from a lawyer's brief which he/she submits to a court by its brevity. The lawyer's brief contains a statement of the law as applied to the crimes in a case.

WAYS OF THE LAW

LESSON 2

SOURCES OF LAW

Lesson 2
SOURCES OF LAW

I. OBJECTIVES:

Students will be able to name various present day Sources of Law.

Students will understand the roots of the American Legal System.

II. OUTLINE OF LESSON CONTENT:

A. The lesson begins with a classroom scene in which students give reports on present day sources of law. Sources reported on include; the common Law, the U.S. Constitution and state constitutions, and the courts.

B. Next students view a film entitled Roots of Our Law, those roots included in the program are:

1. Religion. Under religion we discuss the Code of Hamurabi, The Ten Commandments, Druid Priests, Trial by Torture and Trial by Battle.
2. Custom. Students see how the colonial struggle for survival caused many changes and experiments from English Law as brought to the colonies.
3. Abuse of Power. This segment details King John's abuses which led to the Magna Carta of 1215 A.D. and the abuses of King Charles 1 which led to the English Bill of Rights of 1689.

These documents are the sources of many of our liberties such as no taxation without representation, no quartering troops in private homes, the right to due process, no cruel and unusual punishment among others.

C. Next we return to the classroom for a discussion of reasons for law as a discussion of how England's law adapted to the American environment and how American law will adapt to the future. The law as an ever changing fluid concept is stressed.

III. UTILIZATION

Pre-Telecast Activities:

A. Before the telecast, have your students:
   1. Look for as many sources or roots of law as they can find. These can be specific such as the English Bill of Rights of 1689 or general such as religion.
   2. Become familiar with the vocabulary/concept list.

Post-Telecast Activities

A. Have students think of a school custom which has been repeated so often that it has acquired the force of a school rule.

B. Writing for the majority of the Supreme Court of the United States in Everson v. Board of Education. Justice Hugo Black stated: The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief in any religion. No person can be punished for entertaining or professing religious beliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the

B. (cont.)

Federal Government can, openly or secretly, participate in the affairs of any religions, organizations or groups and vice versa. In the words of Jefferson the clause against establishment of religion by law is intended to erect "a wall of separation between church and state."

Questions:

1. Does the establishment clause of the First Amendment include any additional guarantees not mentioned by Black? Does Black, on the other hand, extend the clause's protection to include too many situations? Explain your position. (See & III - H - 4 in this lesson.)

2. Using your own interpretation of Justice Black's quote, discuss whether you feel that the following actions are constitutional. In each case, note whether you think your interpretation and Black's are the same or different.

   (a) Provide religious chaplins for the armed services and pay their salaries from the U.S. Treasury.

   (b) Open each day's session of the Senate, House of Representatives and Supreme Court with a prayer.

   (c) Provide, with government monies, special food for members of the armed forces who observe religious dietary codes.

   (d) Require all eligible citizens to serve in the armed forces-including those whose religious beliefs prevent them from assuming a non-combatant military role.

C. Have students think of ways that religion influences Law today (e.g. lobbying efforts by religious groups or minister candidates for public office).

D. Have students think of modern or past abuses of power which resulted either in revolution, a change of government or just a change in laws.

E. Invite a local legislator to your class to discuss present day sources of law.

F. Issues for discussion:

1. How many sources of rules, regulations and laws are there for teens? Include everything from parents and schools, to courts, legislatures, executive branches of government and administrative agencies. Discuss how teenagers may have special problems coming to grips with all of these rule makers.

2. In 1979, Iranians overthrew their Shah and established a theocracy or church ruled government. Discuss this form of government citing examples from the past.

G. Correlative Literature:

1. Update magazine

On Law Related Education - Winter 1979

"Religion and The Law."

American Bar Association

1155 East 60th Street

Chicago, IL 60637

2. Case and Comment Magazine

Jan. 1, Feb. 1979
Volume 84, No. 1
"Biblical Parallels in American Law"
pp. 10-17
P. O. Box 1951
Rochester, New York 14603

3. Our Legal Heritage

Alabama State Department of Education

Silver Burdett Company

Morristown, New Jersey

H. Interesting statutes and cases

1. S.C. Code & 14-1-50.

Common law of England shall continue in effect.

"All, and every part, of the common law of England where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect in the same manner as before the adoption of this section."

Research and Practice References--

15 Am Jur 2d. Common Law & 12.

2. Page v. Winter (126 S.E. 2d570, 573.)

In 1712, South Carolina adopted the principles of the Common Law of England (Rev.St. 1872, 146, 10).

"All and every part of the Common Law of England, where the same is not altered by this act or inconsistent with the Constitution, customs, and laws of this state, is hereby

continued in full force and virtue within this state in the same manner as before the adoption of this act."(p. 573)

Facts:

Plaintiff's (moving party's) husband was totally and permanently disabled by the negligent misconduct of Defendant. Plaintiff sued for loss of consortium (the right of husband and wife to the company, cooperation and affection of the other).

Holding:

In S. C. there is no cause of action for a wife's loss of her husband's consortium.

Reasoning:

It is not for this court to repudiate the common law rule because we think it illogical or undesirable. We do not have the right to repeal, alter, modify or change the law of the land even when it plainly appears that the law in force may be wrong.

Since there is no legislative action in this state relating to the matter, we must be governed by the policy of the court (of precedent or stare decisis). Any revision of a firmly rooted public policy should be done by the people via their legislative representatives not the courts.

3. Hatfield v. Palles 537 F 2d 1245 (1976)

Holding: "In South Carolina it is quite clear that the rules of the Common Law are not to be changed by implication and are not to be overturned except by clear and unambiguous statutory language illustrating an intent to do so."

4. First Amendment to the U. S. Constitution:

"Congress shall make no Law respecting an establishment of religion or prohibiting the free exercise therof...."

I. Vocabulary/Concepts

1. Common Law - The body of principles, originated, formulated and administered in England because of the usages and customs of the people. In America it is relied on when there is no Statutory Law which governs.
2. Precedent - a ruling by a judge which governs how a later judge will rule in a similar situation.
3. Stare Decisis - Provides certainty in the law, requires that we stand by old decisions and not disturb what is settled.
4. Courts - interpret and apply the Law. Decide whether a Law is against the Constitution.
5. Constitution - The Legal framework within which a nation operates. All laws must conform with this legal framework.
6. Religion - (legal definition) Belief in a superior being exercising voluntary control over human beings by imposing rules of conduct with future rewards and punishments.
7. Custom - A practice adopted by the people which is repeated over and over until it acquires the force of a law.
8. Participatory Democracy - was used at certain Colonial New England towns. Anyone in attendance could speak out.
9. Abuse of Power - failure to exercise sound, legal, reasonable, proper, action. Malicious exercise of power.
10. Nepotism - Placing friends or relatives into jobs for which they are not qualified.

11. King John - Turned nobles, merchants and churchmen against himself with arbitrary, capricious rule. Forced to sign Magna Carta in 1215.

12. Magna Carta - signed at Runnymede in 1215 - It is the foundation of English Constitutional Liberty.

13. King Charles - ruled England from 1625-1649. Battled Parliament over Magna Charta Issues. Beheaded.

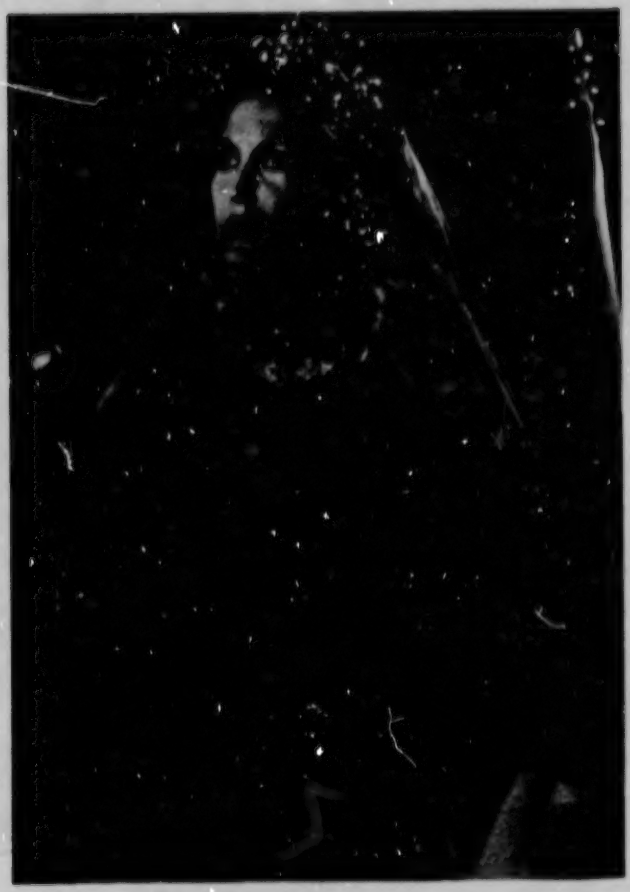
14. English Bill of Rights of 1689 - A condition of William and Mary taking the throne in England. Forerunner of many liberties found in the American Bill of Rights.

15. Administrative Law - Laws made by regulatory agencies such as school boards or public service commissions. Administrative Agencies govern in a quasi-judicial and quasi-legislative fashion.

WAYS OF THE LAW

LESSON 3

REASONS FOR LAW



Lesson 3

Reasons For Law ("Le Cafe Politic")

I. OBJECTIVES:

Students will discuss the reasons for Law.

Students will form their own opinions as to why we need Laws.

II. LESSON CONTENT:

The action takes place in a political coffee house called "Le Cafe Politic". Boho boy, a would be Bohemian, is dating Disco Girl but he can't dance. In order to impress her with his intellectual sophisticatien he takes her to the political cafe.

At the cafe the M. C. anncunces the topic of the evening, "Laws, why and why not". He then introduces each performer.

Betty, the Bavarian jugler does an interpretation of the Supreme Court administering the balancing test to a question of the individual's rights verses the state's right to protect the public welfare under its police powers.

Lee Bell sings a song which sets the cafe mood. He is followed by the poet, Free, who gives a poetical presentation on the reasons for law.

Next the night spot's favorite with the crowds, Zeno, visionary extracrdinaire, space travels. She takes us to a time in the past when there were no laws and into the future when there will be too many. Zeno closes the show with a trip to the near future.

Before and after each act there is discussion among the audience about the reasons for Law.

III. UTILIZATION:

Before the Telecast

A. Have your students become familiar with the statutes and cases in this lesson. (See G. 1,2,3,& 4.)

After the Telecast

A. Divide your class into three groups. Assign the groups one of the following tasks:

1. Design a society without Laws.
2. Design a society with total regimentation.
3. Design a society with Laws, but without codification i.e. no written laws.

Defend your design.

B. Discuss the poem recited by "Free".

"People
People are the reason for Law.
People make Law,
Are Law.
Laws are responses to problems,
People problems,
People solutions.
Laws change as problems change.
Slowly change, thoughtfully change, Lumbering beast,
But Alive!"

C. Discuss the Lee Bell song, "Ways of the Law"

"Taken for granted for all of its reasons you'd better be careful now,
Because someone's freedom depends upon the ways of the law and its reasons,
the ways of the law in these seasons,
Living by law in these seasons."

D. Issues For Discussion

1. How are Laws contradictory to the interests of the people?
2. How do people need laws to keep them in line?
3. Discuss this statement, "One man's freedom ends where another's begins."
4. Why do we need laws?
5. What is wrong with having laws?
6. Is the Preamble to the U. S. Constitution a statement of reasons for law?
7. What do you see as the role of law in your life? Is it positive, negative or both?
8. Ask students whether it is important to follow rules when playing football, tennis, etc., monopoly, backgammon, etc.?
9. When property rights and human rights collide, which should prevail?

E. Analyze the Preamble to the U. S. Constitution in depth. Find the six reasons for law therein. Discuss the validity of each.

F. What would the U. S. be like without government? Discuss these possible results.

1. "There would be no way to settle arguments fairly and peacefully. Thefts and murders would be much more common than they are today.
2. Big businesses -- TV, movies, airlines, car manufacturing, and the like -- could not exist.
3. People would be free to do what they wanted. Life would be simpler and more fun for everyone.
4. Almost everyone would be armed. People would be so busy defending themselves and their "property" that there would be little time for growing food or building houses or educating children.
5. The country would be invaded by foreign armies. We would be easily conquered by any foreign government that wished to rule us.
6. Most people would be terribly poor. Many would starve to death. Many old, blind, and sick people would be without help.
7. There would be only two kinds of Americans. One group would have all the power and the money. The other much larger group would have almost nothing. There would be no freedom for most Americans.
8. People would still be basically good and would get along better without politicians and police.
9. The situation wouldn't last long. Without government, conditions would be so terrible that people would get together all over the country and begin to set up governments to make life safer and better for all."*

* 1-9 from the Scholastic American Citizenship Program, Page 18. School Book Services, 50 West 44th Street, New York, N.Y. 10036

G. Interesting cases and statutes:

1. Preamble to the U. S. Constitution:

"We the people of the United States,
in order to form a more perfect union,
establish justice, insure domestic tranquility,
provide for the common defense,
promote the general welfare,
and secure the blessings of Liberty to ourselves
and our posterity, do ordain and establish this
constitution for the United States of America."

2. The Declaration of Independence

"When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long

established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.— Such has been the patient sufferance of these Colonies: and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained: and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasion on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected: whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise: the State remaining in the mean time exposed to all the dangers of invasion from without and convulsions within.

He has endeavoured to prevent the population of these States: for that purpose obstructing the Laws of Naturalization of Foreigners: refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices and sent hither swarms of Officers to harass our People, and eat out their substance.

He has kept among us, in time of peace, Standing Armies without Consent of our legislatures.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws: giving his Assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government and enlarging its boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with Power to legislate for us in all cases whatsoever.

He has affected to render the Military independent of and superior to the Civil Power.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.

Nor have We been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Province, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor."

3. Village of Euclid Ohio v. Ambler Realty Co.
272 U. S. 365; 47 S. C't. 114; 71 L. Ed. 303(1926)

Appellee owned land within Euclid, Ohio. The village of Euclid passed a zoning law restricting the use of land to residential purposes. The Ambler Realty Company was holding it for industrial use because of its location and the resultant much higher value of the land than if used for residential lots.

Opinion by Mr. Justice Sutherland
(Vote: 6-3)

Question: Does the zoning ordinance take the company's property without due process of law contrary to the Fourteenth Amendment?

Decision: No.

Reason: The zoning ordinance is a valid exercise of the state's police power under which the state has the authority to abate a nuisance. Actually a nuisance may be merely a right thing in a wrong place. Noise, traffic, fire hazards, and the general desirability of an area for "residential" purposes, including the rearing of children, certainly come under the power of the state and its agencies to care for the public safety, health, morals, and general welfare. Concern for the common good may properly override an individual's property rights.

Corollary cases:

Terrace v. Thompson, 263, U.S. 197

Welch v. Swasey, 214 U. S. 91

Hebe Co. v. Shaw, 248 U. S. 297

Cusack Co. v. City of Chicago,
242 U. S. 526

Gorieb v. Fox, 274 U.S. 603

Nectow v. City of Cambridge
277 U. S. 183

Queenside Hills Realty Co. v. Saxl
328 U. S. 80

Berman v. Parker, 348 U. S. 26 (1954)

4. Edwards v. California, 314 U. S. 160;
62 S. C't. 164; 86 L. Ed. 119 (1941)

Edwards was a citizen of the United States and a resident of California. He left Marysville, Calif., for Spur, Texas, with the intention of bringing his wife's brother, Frank Duncan, to Marysville. Duncan was a resident of Texas. Edwards knew that Duncan was employed by the W. P. A. and was aware the he was an indigent person throughout the case. They went to California in Edwards' car. Duncan had about $20 when he left Texas and nothing when he arrived in California. He lived unemployed with Edwards 10 days, then received assistance from the Farm Security Administration. The district court decided that Edwards violated the Welfare and Institutions Code of California by knowingly bringing into the state a nonresident indigent person.

Opinion By Mr. Justice Byrnes
(No evidence from the report that the decision was not unanimous.)

Question: Is this law a valid exercise of the police power of the state of California?

Decision: No.

Reason: The California statute concerning the entry of indigent persons was a violation of the commerce clause of the federal Constitution. The passage of persons from state to state constitutes interstate commerce within the provisions of Article I, Section 8 of the Constitution delegating to Congress the authority to regulate interstate commerce, and the California law imposed an unconstitutional burden on such commerce. The concurring opinion noted that the right to move freely from state to state is an incident of national citizenship protected by the privileges and immunities clause of the Fourteenth Amendment against state interference.

Corollary cases:

Hague v. C.I.O., 307 U.S. 496

Baldwin v. Seelig, 294 U.S. 511

City of New York v. Miln, 11 Peters 102

Milk Control Board v. Eisenberg Farm Products, 306 U. S. 346

Crandall v. Nevada, 6 Wallace 35

Southern Railway Co. v. King 217 U.S. 524

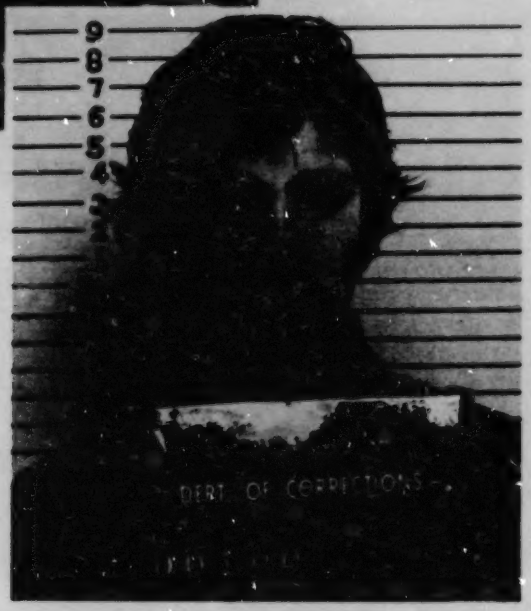
S. C. State Highway Dept. v. Barnwell Bros., 303 U.S. 177

Southern Pacific Co., v. Arizona, 325 U.S. 761

WAYS OF THE LAW

LESSON 4

CRIMINAL PROCEDURE
(TIME FOR NOT THINKING)



Lesson 4

Criminal Procedure (Time for Not Thinking)

I. OBJECTIVES:

Students will understand how and why the police obtain a search warrant.

Students will understand the procedure followed in processing one who has committed a crime.

II. OUTLINE OF LESSON CONTENT:

A. The program begins with a drug deal taking place. One of the dealers is actually an informant who approaches officers Kane and Lumpkin with her information and tells them how much marijuana is involved and where it is located. The officers appear before a magistrate and request a search warrant based on this information. To obtain the search warrant, they have to prove probable cause that the goods for which they wish to search are present at the location they say they are. The warrant is issued.

B. Some weeks later Office Kane is on patrol when a truck speeds by. He stops the truck for speeding and finds a gun and some marijuana on the young man driving the truck. A later custodial inventory search of John Hampton's truck reveals more marijuana. All in all it's more than an ounce.

C. From his arrest, we follow John Hampton through the criminal process including jail, bail hearing, preliminary hearing which occurs two months later, conference with his attorney, Plea bargaining which occurs a few weeks later, Guilty plea and sentencing.

D. A song called, "Time for not Thinking", is played as a photo essay of John Hampton being booked is seen.

III. UTILIZATION:

Before the Telecast:

A. Have your students discuss whether or not one can also be arrested for a crime other than the crime for which one is originally stopped.

B. Have your students discuss whether or not it is easy to get arrested.

C. Have your students become familiar with the vocabulary/concept list and the Fourth Amendment to the U. S. Constitution (See III-I-1 in this lesson.)

Post Telecast Activities:

A. Invite a local criminal defense attorney and the local solicitor or prosecutor to your class to discuss criminal procedure.

B. Ask your students or a visiting attorney the following questions:

1. Are judges bound by a prosecutor's recommendation of probation?

    a) Have your lawyer explain.

    b) Where does this leave the defendant and his attorney?

2. If a lawyer tells a defendant that the judge and prosecutor have agreed to sentence him to five (5) years, in return for a guilty plea, the judge's sentence cannot exceed five (5) years. If it does, the defendant is entitled to a new trial.

   Ask your students if this is so, inform them that it is, and discuss the ramifications for all the parties involved.

C. Go on a field trip to the county courthouse and watch a criminal trial. The Clerk of Court would probably be willing to assist you.

D. Stage a mock trial in your classroom by appointing students as Judge, Jury, Defense Lawyer, Prosecutor, Witnesses, Bailiff, and Criminal. Ask a local attorney to assist you.

E. Have members of your county bar stage a mock trial with your class participating.

F. Amendments 1-8 of the U. S. Constitution all touch on issues relative to criminal procedure or individual rights. Divide your class into eight groups each to report on an amendment and how it relates to criminal procedure or individual rights.

G. Invite a policeman to visit your class.

H. Issues for Discussion:

1. What is plea bargaining? Is it a good idea?
2. Does our legal system provide so many constitutional safeguards for defendants that it strangles law enforcement?
3. Why does our system have so many constitutional safeguards? Refer back to the Sources of Law show.
4. Why should the state provide attorneys to the indigent?

I. Correlative Literature:

Street Law (A course in Practical Law)
National Street Law Institute
St. Paul, Minnesota
West Publishing Company

Our Legal Heritage
Alabama State Dept. of Education
Silver Burdett Company
Morristown, New Jersey

Rights of the Accused
Xerox Education Publications
1250 Fairwood Avenue
Columbus, Ohio 43216

Criminal Procedure in a Nutshell
LaFave and Israel
West Publishing Company
St. Paul, Minnesota

Criminal Justice
Constitutional Rights Foundation
Scholastic Book Services
50 West 44th Street
New York, N.Y. 10036

Interesting Cases and Statutes:

1. Searches:

   (a) The Fourth Amendment to the U. S. Constitution: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

2. Consent to Search:

   (a) Stoner v. California 376 U.S. 483, 84 S.C't.889, (1964). Hotel desk clerk can't give a valid consent to search a guest's room.

   (b) Sneckloth v. Bustemonte 412 U. S. 218, 9 S.C't. 2047, 36 L.Ed. 2d 854 (1973). Consent to a search must be given voluntarily and not due to police coercion (overt or subtle) in order to be deemed valid consent.

   (c) A parent may consent to the search of a child's room in some states, but it depends on the amount of control the parent exercises over the area.

   People v. Nunn, 55 Ill 2d 344, 304 N.E. 2d 81 (1973) The mother's consent to search her 19 year old son's room was

ineffective. The court reasoned that he had a "reasonable expectation of privacy" in a room in his mother's house which he kept locked.

3. Searches with a Warrant:

(a) U. S. v. Harris 403 U.S. 573, 91 S. C't. 2075 (1971) an uncorroborated tip does not amount to the probable cause necessary to obtain a search warrant.

(b) Moore v. U. S. 461 f 2d. 1236 (D.C. Cir. 1972) A single warrant cannot describe an entire building when probable cause is shown for searching only one apartment.

4. Searches without a warrant:

(a) Chimel v. California 395 U. S. 752, 89 S.Ct. 2034 (1969) Facts: Late afternoon, Sept. 13, 1965 three police officers went to Chimel's home with a warrant authorizing his arrest for the burglary of a coin shop. But without a search warrant, Mrs. Chimel let them in and 10-15 minutes later Chimel arrived home and was arrested. The officers asked permission to "look around", Chimel objected but was told that they could anyway based on the lawful arrest. Over the next hour they searched the entire three-bedroom house including the attic, garage and a small workshop. In some rooms the officers directed Mrs. Chimel to open drawers and move the contents around so that they might have a better view. They found and took some coins and medals. Chimel objected that the items used at trial were unconstitutionally seized and appeals his conviction.

Result: Reversed.

Reasoning:

A search or seizure without a warrant as an incident to a lawful arrest is permissible, though limited right growing out of the necessities of the situation at the time of the arrest. The arresting officer (s) need to be able to make a search to ensure their own safety, to remove any weapons that the person arrested might seek to use in order to resist arrest or effect his escape. And it is also reasonable for the arresting officer (s) to search for and seize any evidence on the arrested one's person to prevent its concealment or destruction. Again, for the officer's safety and the preservation of evidence, it is reasonable for him to search areas around the arrested person from which he might draw a weapon. "There is no comparable justification, however, for routine searching rooms other than that in which an arrest occurs--or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself." The Fourth Amendment requires a search warrant for that, absent a narrow exception.

Holding:

The search here went far beyond the petitioner's (Chimel's) person and the area from which he might have obtained a weapon or something that could have been used as evidence against him. There was no constitutional justification, in the absence of a search warrant, for extending the search beyond that area. The scope of the search was, therefore, "unreasonable" under the Fourth & Fourteenth Amendments, and the Petitioner's conviction cannot stand!

(b) Vale v. Louisiana 399 U.S. 30, 90 S.C't. 1969 (1970) A search made incident to an arrest must be substantially contemporaneous with the arrest and confined to the immediate vicinity of the arrest. An arrest made outside on the street cannot justify a warrant less search of the arrestee's house.

(c) Chambers v. Maroney 399 U.S. 42, 90 S. C't. 1975, 26 L.Ed 2d 419 (1970).

(...automobiles are different from houses....the circumstances that furnish probable cause to search a particular auto for particular articles are most often unforeseeable; moreover, the opportunity to search is fleeting since a car is readily movable." The occupants may be alerted and the car's contents may never be found again if a warrant must be obtained.

See Also:

(d) Carroll v. U. S., 267 U.S. 132 (1925)

(e) Taglavore v. U.S., 291 F 2d 262, 265 (9th Cir. 1961)

(f) Marron v. U.S., 275 U.S. 192 (1927)

(g) U.S. v. Kline, 565 F 2d 183 (1st Cir. 1977)

(h) Alderman v. U.S., 394 U.S. 165 (1969)

If interested, we suggest that you assign a student to visit a local attorney's office and ask for assistance in researching the above listed cases and others.

K. Vocabulary/Concept List:

1. Probable Cause: reasonable grounds to believe a certain fact is true. More evidence for than against.
2. Search incident to an arrest: a search conducted when an officer arrests someone. It is a limited search of the arrestee and the

area under his immediate control for weapons. It protects an officer from harm when he arrests potentially violent people.

3. Warrantless search: a search without a search warrant. A legal search only under certain circumstances.
4. Exigent circumstances: emergency situation which validates a warrantless search if the officer has reasonable grounds to believe that the contraband will disappear if the time is taken to obtain a warrant.
5. Plain View Doctrine: If in the course of a valid search, police officers discover items unexpectedly which are not named in the warrant, but which could have been the subject of a search warrant, the police may seize the items.
6. Arrest: To deprive a person of his liberty by legal authority.
7. Custodial Inventory Search: a search conducted at the police station to produce a list of defendant's possessions. Defendant's auto may also be searched if towed to the police station. Any contraband in plain view at this time may be seized.
8. Bail hearing: hearing to determine the amount of money, if any, that must be paid to secure defendant's release from legal custody.
9. Preliminary Hearing: the issues presented by the case are brought up, and the state's evidence is presented, then the judge decides whether probable cause (reasonable grounds) to believe that the defendant committed the crimes of which he is accused. If so, the case is bound over for the grand jury.
10. Grand Jury: hears evidence and decides whether or not to indict the defendant.
11. Indictment: an accusation in writing found and presented by a grand jury to the court that the named person committed the crime of which he is accused.

12. Plea Bargaining: a process whereby defendant agrees to plead guilty in return for a recommendation from the prosecutor to the judge of probation or a reduced sentence. This saves the prosecutor and judge the time and expense of preparing and carrying out a trial.
13. Probation: Allowing a person convicted of an offense to go at large under a suspension of sentence during good behavior, and generally, under the supervision of a probation officer for a given period.
14. Indigent: lacking the means of subsistence, impoverished.

WAYS OF THE LAW

LESSON 5

SUBSTANTIVE CRIMINAL LAW

(HAPPY HERE)

WAYS OF THE LAW

LESSON 5 SUBSTANTIVE CRIMINAL LAW (HAPPY HERE)

I. Objectives:

Students will be cognizant of fundamental substantive criminal law concepts.

Students will appreciate the horrors of prison life.

II. Outline of lesson content:

There is an opening statement by an inmate. Mime sequences examine criminal law concepts and are followed by interviews with inmates serving time for the described offense.

A. Act I CRIMES

SCENE 1

(a) The definition of a misdemeanor is voiced over mimists being arrested for speeding.
(b) An inmate in prison for writing bad checks is interviewed.

SCENE 2

(a) The definition of a felony is voiced over a mimist pulling a gun and shooting another mimist.
(b) An inmate in prison for armed robbery, murder and grand larceny is interviewed.

SCENE 3

(a) The definition of a crime is voiced over mimists committing harmful acts while hypnotized or asleep.
(b) An inmate in prison for possession of heroin and cocaine with intent to distribute is interviewed.

B. Act II INCOMPLETE CRIMES

SCENE 1 ATTEMPT

(a) The definition of attempt is voiced over a mimist trying to poison another mimist.
(b) An inmate who has served time for, among other offenses, attempted breaking and entering is interviewed.

SCENE 2 ACCESSORY

(a) The definition of accessory is voiced over as a mimist keeps a lookout for another mimist who breaks into a store.
(b) An eighteen year old inmate who is in prison for being an accessory to forgery is interviewed.

SCENE 3 CONSPIRACY AND SOLICITATION

(a) Definitions of consipracy and solicitation are voiced over a mimist persuading another to shoot a police officer for $2,548.51.

C. INTERMISSION

1. A rape victim tells her story.

2. An eighteen year old inmate explains why he is on protective custody.

3. An inmate explains how jail is not a game.

4. An inmate explains how felons lose many of the rights other citizens have.

5. The song "Happy Here" is played over a photographic essay of prison life.

D. Act III THREE CATEGORIES OF CRIME

SCENE 1 CRIMES AGAINST PROPERTY

(a) The definition of crimes against property is voiced over mimists causing property damage.
(b) An interview with an inmate in prison for receiving stolen goods follows.

SCENE 2 VICTIMLESS CRIMES

(a) Gambling, drug abuse and other so called victimless crimes are mimed out as the definition of victimless crimes is voiced.
(b) A former professional musician relates how his life was ruined by a drug problem and consequent criminal acts.

SCENE 3 CRIMES AGAINST THE PERSON

(a) The definition of crimes against the person is voiced over mimists reeking havoc on department store manakins.
(b) Inmates in prison for voluntary manslaughter, armed robbery with intent to kill, and murder are interviewed.

There is a closing statement by the inmates.

III. UTILIZATION

Pre-Telecast Activities

A. Before the telecast, have your students:

1. Discuss why people commit crimes.

2. Become familiar with the Vocabulary/Concept List.

Post-Telecast Activities

A. Invite a local criminal defense attorney and the local solicitor or prosecutor to your class to discuss criminal law. Ask them to bring Volume 8 of the S. C. Code.

B. Go on a field trip to the local city, state or county jail.

C. Contact Operation-Get Smart, Room 214, 4444 Broad River Road, P. O. Box 21787, Columbia, S. C. 29221 and invite a team of inmates to relate their experiences to your class. PHONE: (803) 758-6486.

D. Issues for Discussion:

1. Should criminals be forced to make monetary restitution to their victims?

2. Do prisons do any good? Why do they exist?

3. With over population a continuing problem, what will future prisons be like? Outer space or under sea prison colonies or drug induced mental incarceration may be commor

4. Should executions be televised to warn the public of the consequence of capitol offenses?

5. Should so-called victimless crimes such as drug abuse and gambling be punished?

6. Should insanity be a valid defense in a criminal case? If so, why? (See G. 3.)

E. CORRELATIVE LITERATURE:

Living Law - Criminal Justice
Scholastic Book Services
50 West 44th Street
New York, N. Y. 10036

Street Law (A Course in Practical Law)
National Street Law Institute
St. Paul, Minnesota
West Publishing Company

Criminal Law for the Laymen
Chilton Book Company
Radnor, PA

Criminal Law and its Processes
Second Ed.
Little, Brown and Company
Boston - Toronto

Movie: "Clockwork Orange"
This Stanly Kubrik film takes a look at a future society's problem with crime and its attempts to solve the problem.

F. You may wish to have your students or a select group of them view our tape, "Save The Children". It is available as a supplement to the Ways of the Law Series. The tape has very strong language and sexual references. It would be necessary to preview it before showing it to anyone and you must assume the responsibility for choosing your audience.

G. Interesting statutes and cases:

1. See S. C. Code (1976) annotated, Volume 8, Title 16, "Crimes and Offenses" Chapters 1-23.

2. State v. Quick 195 SE 2d 101, 199 S. C. 256 (1942) Defendant was convicted of unlawful manufacture of intoxicating liquors and he appeals. He was stopped by officers as he was driving on a dead end road toward two liquor stills which the officers had discovered. Five hundred pounds of sugar, a sack of mill feed and three cases of yeast cakes were discovered in defendant's car.

Holding: Conviction reversed. The court found that the incidences tended to show intent to manufacture liquor..."but intent alone, not coupled with some overt act toward putting the intent into effect is not cognizable by the courts." The Law does not concern itself with mere guilty intention, unconnected with an overt act.
What constitutes an act is to be liberally construed, but the act must always amount to more than mere preparation and it must move directly toward the commission of the crime.

3. State v. Law 244 S.E. 2d 302 (1978)
"The test in S. C. (known as the McNaughton test) of whether an accused is criminally responsible for his actions is whether he had the mental capacity to distinguish moral or legal right from moral or legal wrong, and to recognize the particular act charged as morally or legally wrong.

4. State v. Parker 227 S. E. 2d 677 (1976)
"A crime is generally defined as an act which is committeed or omitted in violation of a public law commanding or forbidding the act. To this definition the authorities usually add the requirement that there be some punishment attached to a violation of Law".

5. Also see:

(a) 21 Am Jur 2d S 81.
(b) State v. Welch, 59 S.E. 2d 199, 233 N.C. 77 (1950)
(c) State v. Brown, 21 N.C. 301, 20 S.E. 2d 286 (1942)
(d) State v. Evans, 216 S.C. 328 (1950)
(e) Regina v. Faulkner, 13 Cox Crim.Cas.550 (1877)
(f) Lamber v. California,355 U.S. 225, 78 Sup.Crt. 240, 2L Ed. 2d 228
(g) Regina v. Serne,16 Cox Crim.Cas.311 (1887)
(h) Hicks v. U.S.,150 U.S. 442, 14 Sup.Crt. 144, 37L Ed./137 (1893)
(i) Pinkerton v. U.S.,328 U.S. 640,; 66 Sup.Crt. 1180, 90L Ed. 1489 (1946)

If interested, I suggest that you assign a student to visit a local attorney's office and ask for assistance in researching the above listed cases. Also see Lesson 1's segment III on how to look up statutes and cases.

H. VOCABULARY/CONCEPT LIST:

1. Misdemeanor: a crime which carries a sentence of a year or less in prison.

2. Felony: a serious crime which carries a prison term of a year or more.

3. Crime: an action committed or omitted in violation of a public law. It is composed of voluntary action plus evil intent plus harmful consequences.

4. Attempt: occurs when a substantial step toward the commission of a crime has been taken.

5. Solicitation: commanding or requesting that another person commit a crime.

6. Conspiracy: an agreement between two or more people to commit a crime. There must be a planning and at least one overt act toward its accomplishment.

7. Accessory: a person who aids or assists another person in the performance of a criminal act.

8. Crimes against Property: cause no physical harm to the victim. Only his property disappears or is damaged.

9. Victimless Crimes: Crimes which are harmful to no one except in some cases the person committing the crime himself. Some say victimless crimes are harmful to society as a whole.

10. Crimes against the person: Crimes in which physical injury is caused to the person.

11. Strict liability: Liability without fault.

12. Felony Murder Rule: Any homocide committed while perpetuating or attempting a felony is first degree murder. The hand of one is the hand of all.

WAYS OF THE LAW

LESSON 6

LAW ENFORCEMENT

(CITIZEN'S ROLE)

Lesson 6

LAW ENFORCEMENT (THE CITIZEN'S ROLE)

I. Objectives:

Students will understand that a great deal of the crime prevention burden is on the shoulders of the citizenry

Students will recognize that they can take steps to prevent crime.

II. Outline of Lesson Content:

Students view a series of shots detailing police operations and the crime wave. The solution to the crime wave is said to be citizen involvement. Suggestions on how to protect your home from crime are dramatized.

An interview with a county police officer is conducted and a community self-protection program called Safety Security Patrol is explained.

A 13th Judicial Circuit program designed to assist victims of and witnesses to crimes make it through the trial process is detailed.

Jack Ethridg, Lawyer, Judge, Legislator, Adviser to the President and Law Professor introduces the Neighborhood Justice Center where volunteer mediators try to solve disputes which really should not wind up in court.

III. Utilization:

Pre-Telecast Activities

1. Ask students what they can do to prevent crime.

2. Inform students that the police spend most of their time solving crimes that have occurred. Then ask students who should be preventing crime.

3. Bring to class newspaper articles dealing with citizen violence against police and vice versa.

4. Have students become familiar with the vocabulary/concept list.

Post-Telecast Activities

1. Invite the local Sheriff or another police official to your class. Ask him to speak on law enforcement problems and the citizen's role in stopping crime.

2. Inquire as to whether or not the local police have a citizen ride-around program. If so, ride around with them and send your students too.

3. Go on a field trip to your local county or city law enforcement agency.

4. Discuss this quote from Urban Lawyer, "Recent trends in Police Litigation":

"Police practices are certainly in the spotlight. Post-Watergate morality, disclosures of FBI break-ins and wiretaps, CIA interference with the mails and a host of "dirty tricks" have changed American attitudes toward police. Public-interest law firms, consumer and environmental groups frequently have spin-off committees to combat "police facism." Taxpayer actions also are becoming more frequent. A recent California case affirmed the right of a citizen to challenge the enrollment of police officers in the state university system; the citizen alleged such enrollments placed restraints on the freedom of speech and association.

Rank-and-file police associations have become more vocal and many are going to court regularly. Leaders are beginning to notice that street-level cops are unable to cope with the large number of conflicting decisions affecting their actions. Police leaders feel their constituents are pawns between financial crises of cities and civil liberties groups; they believe officers are entitled to better training and may have a cause of action against departmental and municipal officials for indemnity. For too long, cities have employed patrolmen with a mere ten to twenty hours of training in arrest, search and seizure, but the cities expect officers to personally absorb all or part of monetary awards against them for their innocent misunderstandings of the law.

Enlightened communities are adopting legal advisor programs to better inform officers. A recent Florida appellate decision held that advice of the police legal advisor is a defense to an action alleging false arrest and imprisonment. On the other hand, equal opportunity employment actions which seek to disregard educational requirements, arrest records and exam performances seem counter-productive."

5. Issues for Discussion:

A. Why do citizens fail to report suspicious incidents or persons?

B. Why are witnesses reluctant to come forward to testify or provide information?

C. Discuss the President's Commission on Crime Prevention finding that: "Hostility toward or even lack of confidence in police interferes with recruitment; lowers police morale; decreases support for higher salaries; sufficient personnel, and needed equipment and facilities.

D. Should police officer promotion be based on crime solving or crime preventing?

E. What causes Police-Public confrontation?

Possible Answers:

1. When minority group patrolmen are not teamed with white officers in patrolling minority neighborhoods.

2. An officer assigned to a high crime area is often operating in what he considers a totally alien environment.

3. The policeman is a convenient visible target at which groups can aim their wrath for unemployment, bad housing, poor education, etc.

4. Police abuse of citizens.

5. Many police departments have no formal procedure to receive citizen complaints.

6. Politicization of police behavior creates serious obstacles to public cooperation with law enforcement officials.

7. Corruption.

8. Citizen abuse of police.

F. What can you (your students) do to promote a more cooperative attitude toward solving crime?

G. Contact the Division of Public Safety Programs, Office of the Governor, Columbia, S.C. 29201. Ask for brochures and information on crime prevention.

Correlative Literature:

Marshalling Citizen Power Against Crime
Chamber of Commerce of the U. S.
1615 H. Street, N. W.
Washington, D. C. 20062

U. S. News and World Report
"Police, Underfire, Fighting Back"
August 3, 1978 pp. 37-46

The Urban Lawyer
"Government Tort Liability,
Recent trands in Police Litigation"
pp. 682-692. Fall, 1976.

H. Interesting Cases:

White v. Davis, 533 F.2d 222 (Cal. 1975)
Toomey v. City of Ft. Lauderdale, 311 50.678 (Fla. App. 1975)

I. Vocabulary/Concept List:

1. Polygraph - An instrument which records changes in such physiological processes as heartbeat, blood pressure, and respiration and is sometimes used in lie detection.

2. Mediation - To seek to resolve differences between two or more conflicting parties.

3. Victim - A person who is harmed, killed, tricked, swindled, or injured.

4. Witness - One who is called upon to testify before a court about something he has seen or heard.

5. Team Policing- Patrolmen and specialists are assigned to work together to handle all the crimes in a relatively small area.

WAYS OF THE LAW

LESSON 7

LAW ENFORCEMENT
(PATROL OFFICERS)

Lesson 7

LAW ENFORCEMENT (PATROL OFFICERS)

I. Objectives:

Students will appreciate the role of patrol officers in our society.

Students will understand the problems involved in Law Enforcement

II. Outline of Lesson Content:

A host outlines the main problems and functions of Patrol Officers and interviews various individuals with patrol experience.

Dramatizations reveal Patrol Officers dealing with family disturbances, unnecessary calls, and pressures at home.

III. Utilization:

Pre-Telecast Activities

A. Ask students what they think when they are riding or walking around and see a police officer.

B. Bring magazine and newspaper articles to class that concern the police.

Post-Telecast Activities

A. Invite a local patrol officer or sheriff's deputy to your class to speak and answer questions about his job.

B. Ask your students to observe the police and to report on any police activities they observe. What conclusions do they draw from their observations?

C. 1. Assign two of your students the roles of Patrol Officer and citizen on the street. Have them improvise the situation of a policeman questioning a citizen on the street.

2. When they conclude have your class criticize their attitudes and actions.

3. Remember: a. A policeman should have probable cause to stop a citizen.
b. When a police officer has probable cause to stop you, he can make you identify yourself and explain what you are doing in the area.
c. The best thing a citizen can do when stopped for questioning is cooperate.

4. When a police officer asks you questions which seem to connect you with a crime, you have the right to stop talking.

5. You may want to have several of your students do this role-play activity possibly with a police officer there to critique their actions.

D. Issues for Discussion:

1. Why would anyone want to enter a profession with low pay, danger, high suicide rate, high incidence of alcoholism, among other drawbacks?

2. Is discretion as to whom to arrest for what necessary? Discuss the abuses which could result.

3. What public service functions do patrol officers perform (e.g. retrieving lost animals, first aid, directions, etc.)?

4. How widespread is police abuse of power and corruption? What causes it?

5. What would we do without Patrol Officers?

6. What functions do patrol officers perform?

7. Discuss Officer John Doe's predicament and attitude, he said, "Some guy who hasn't got the guts to sign his name writes a letter against you and you never get done explaining." The best thing is to do as little as possible and stay out of trouble.

E. Order a copy of the Federal Employment Information Directory for the Criminal Justice System at:

Fed. Employment Information Directory
NELS
Texas Criminal Justice Center
Sam Houston State University
Huntsville, Texas 77341

F. Correlative Literature:

Opportunities in Law Enforcement and Related Careers
James D. Stinchcomb Vocational Guidance Manuals, Inc.
Louisville, Kentucky

Stories Cops Only Tell Each Other
Gene Radano
Stein and Day Publishers
New York

Signal Zero
George Kirkham
J. B. Lippincott Company
Philadelphia and New York

Criminal Justice (Living Law)
Scholastic Book Services
50 West 44th Street
New York, NY 10036

Street Law
National Street Law Institute
St. Paul, Minnesota
West Publishing Company

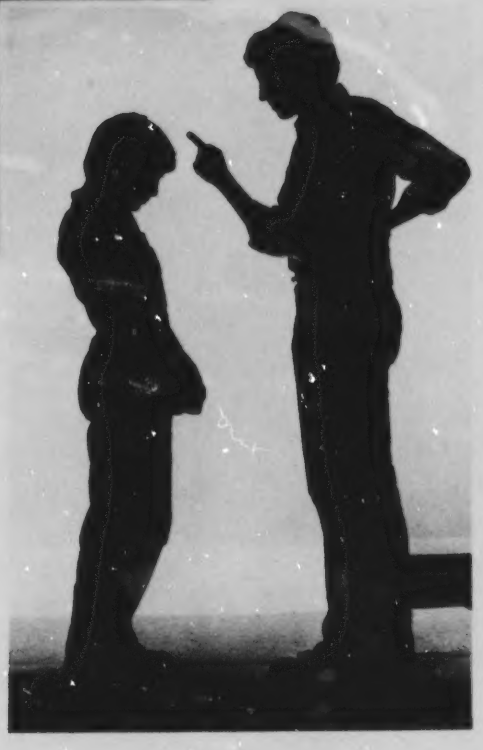
Local Government Police Management
Bernard L. Garmire
International City Management Association
1140 Connecticut Avenue, N. W.
Washington, D. C. 20036

WAYS OF THE LAW

LESSON 8

FAMILY LAW

(JUVENILE JUSTICE: IN THE INTEREST OF...)



WAYS OF THE LAW

LESSON 8

FAMILY LAW (JUVENILE JUSTICE)

I. OBJECTIVES:

Students will understand the juvenile justice system.

Students will understand that juveniles can be tried as adults.

II. LESSON CONTENT:

This lesson combines documentary and drama. Interviews with a juvenile probation officer, a family court judge, a juvenile prosecutor, and a juvenile defense attorney take place. Each of these interviewees introduces a dramatic segment and takes part in another segment depicting himself on the job. A host ties it all together.

The first interview is with a juvenile probation officer who describes his role and introduces the first dramatic scene where three young men are selling stolen goods. One young man, angry over the price, beats the buyer over the back of the head with a radio, killing him.

Our second interview is with a family court judge. He describes his duties vis à vis juveniles and introduces the waiver hearing for the young murderer. The interviewed judge plays the judge for the waiver hearing. The prosecutor and defense lawyer whom we interview later take part in the hearing. The young man is waived to General Sessions Court to be tried as an adult with the possibility of getting a death sentence.

Our next two interviews are with a juvenile police officer and a defense lawyer for juveniles who introduces a dramatic segment on status offenders. In the dramatic segment a young girl runs away from a bad home situation only to get into trouble for shoplifting food. The next dramatic scene portrays her being counseled by the probation officer whom we interviewed earlier.

Next, there is an interview with a juvenile prosecutor who describes her role and introduces the last dramatic sequence involving young men breaking into and vandalizing a neighborhood home.

The wrap up is the host detailing how legislators are passing get tough statutes and courts are expanding juvenile due process rights. Juvenile court is becoming more like adult court every day.

III. UTILIZATION

Pre-Telecast Activities:

A. Ask your students what is the maximum sentence a minor can receive for any violation.

B. Have your students become familiar with the vocabulary/concept list.

Post-Telecast Activities:

A. Invite your local juvenile prosecutor to class to discuss juvenile crime.

B. Invite an attorney who represents juveniles or the local public defender for juveniles to your class for his perspective.

C. Invite a juvenile police officer to your classroom.

D. Divide your class into three "Juries." Give each jury one of the following cases. Ask each jury to determine the appropriate sentence for each offender. Then compare your students' disposition or sentence with what actually happened in each case.

CASE 1. NAME: Jim Vanitue SEX: Male
AGE: 16 PRIOR RECORD: NO

Background Report:

Jim Vanitue lives in City View Heights, an affluent suburb of metropolitan Crimeville. His father is an electrical engineer and his mother is employed by the school board as a teacher. Jim has no record and is 16 years old. He has been found guilty of firing a .22 caliber semi-automatic rifle from a highway overpass into a bus in which a woman was shot in the mouth and two men were injured by flying glass.

ACTUAL DISPOSITION:

A Harford County Circuit Court Judge has released a teenage boy who "admitted" shooting at a bus on the John F. Kennedy highway last June.

A woman was shot in the mouth, and two men were injured by flying glass as a result of the attack on the bus, which was carrying a bowling team from the Bronx, N.Y.

Judge Edward D. Higinbothom said he has no regrets "whatsoever" about his decision.

"That's the whole theory of Maryland juvenile law, to avoid incarceration where you can reasonably do so," the judge said Friday.

Judge Higinbothom said he has placed the youth under the supervision of the Department of Juvenile Services until he reaches the age of 18, ordered him to make restitution for the medical costs and restricted him from hunting "unless accompanied by his father."

"The father said that the two were trying to rebuild their relationship and asked if they could be allowed to go hunting together," the judge said, explaing the restriction."

He said testimony was given by a psychiatrist during the two-hour closed hearing three weeks ago that the young boy was "not a danger" to anyone and that he was continuing his treatment.

"There was no motive explained. It was just a senseless act of a young boy. It was completely improper and very fortunate that no one was killed," the judge said.

However, he said with all the testimony and information that had been supplied to him, he felt that it "didn't seem like the kind of case where a boy should be removed from his home environment."

No witnesses testified for the state, said Judge Higinbothom, adding, "I guess that was because the boy admitted the shooting."

The shooting occurred about 12:30 a.m. June 11 near Havre de Grace.

Bertha H. Howe, 64, one of the passengers, was shot in the mouth by a slug from a .22 caliber semi-automatic rifle fired from a highway overpass. Serious injury was was prevented when the bullet was halted by the elderly woman's teeth.

She and two other passengers struck by flying glass were not seriously injured.

State Police investigators interviewed about 75 persons, most of them juveniles, before charging 3 juveniles, 2 from Aberdeen and a third from Havre de Grace, in the attack on the bus.

Judge Higinbothom said that two other youths were found not guilty "because they didn't take any part in it."

CASE 2. NAME: Joe Warren SEX: Male
AGE: 16 PRIOR RECORD: NO

Background report:

Joe Warren, a black youth age 16, lives in the poor section of Crimesville, a large city in the state of Euphoria. He has never know his father and his mother works as a domestic, in the affluent suburb mentioned in Case 1. Warren has been convicted of stomping a 64-year old woman to death in a $6.00 robbery.

ACTUAL DISPOSITION:

Teach Law and order in schools, Judge urges:

A judge who sentenced a 16 year old to die in the electric chair says law and order should be taught in public schools, just like reading and writing, to help curb such crimes.

"Something has to be done to stop crimes like this," Judge Clifton Kelly of Polk Circuit Cort said in a 13-page appendix to the death sentence he imposed Monday on Joe Warren. The teenager was convicted of stomping a 64 year old woman to death in a $6.00 robbery last year.

CASE 3. NAME: Diane Mullins SEX: Female
AGE: 16 PRIOR RECORD: NO

Background Report:

Diane is a 16-year old girl who lives with her mother and step-father. Diane's natural father deserted the family twelve years ago. Diane's mother began living with the girl's step-father, a manager of a motel and an alcoholic, two years ago in a common law arrangement.

Prior to 1977, Diane was considered by her teachers to be a good student, eager to participate in class activities, and always active in school affairs. Her friends found Diane to be warm and friendly. Both teachers and friends have noticed a definite change in Diane's behavior and in her attitudes toward life in the last two years. She is frequently truant from class, and, when she does attend, she is untidy and unkempt in appearance.

School counselors received a number of complaints that Diane was involved in drug traffic with students from the school and transients at her step-father's motel. Diane was arrested and pleaded guilty to selling drugs in Juvenile Court.

ACTUAL DISPOSITION:

The court found Diane's home to be an unsuitable environment in which to live. She was removed from her home and placed in a foster home. The court viewed her as a victim rather than as a juvenile offender.

E. Issues for Discussion:

1. Are juvenile courts tough enough on youthful offenders?

2. Should there be a dual court system, one for juveniles and one for adults?

3. Do you think the juvenile justice system is effective? What changes should take place?

4. Is there a relationship between poverty and youth crime?

5. Is there a relationship between child abuse and youth crime?

6. What causes child abuse and neglect? Possible Answers:

   a. Immature insecure parents.
   b. Lack of parenting knowledge - the way our parents treated us often reflects how we relate to our own children.
   c. Social isolation - no friends and family to help.
   d. Frequent crises financial, marital, legal, or illnesses
   e. Drug or alcohol problems.

7. Should status offenders be jailed? If so, should they be mixed with other more serious offenders either juvenile or adult?

8. Should rehabilitation or punishment be the focus of the juvenile justice system?

9. Why do youths under 18 commit more than 50% of the following crimes?

   a. Burglarly, breaking and entering
   b. Auto theft
   c. Property crimes in general
   d. Arson
   e. Vandalism
   f. Loitering & curfew violations
   g. Running away

F. Contact The Department of Youth Services at

P. O. Box 21487
Columbia, S. C. 29221

for information or to request a guest speaker.

G. Contact the Department of Juvenile Placement and Aftercare
2221 Devine Street, Suite 500
Post Office Box 5535
Columbia, SC 29250

to send a representative to discuss Juvenile Justice.

H. Discuss the following newspaper article. Should the young man have been waived to adult court? Should his name have been printed in the newspaper?

"14-YEAR-OLD TO BE TRIED AS ADULT"

ANDERSON (AP) —- A family court judge had ordered 14-year-old Timothy Wayne Brown to be tried as an adult in the March term of General Sessions Court.

The Anderson boy is accused of murder in the June 1979 shotting death of Ruby Lewis, a 63-year-old woman who lived near his home.

Family court matters are usually held in private, and records are not made public.

But sources who saw copies of Judge Fox Cahaly's ruling said he cited the seriousness of the crime and his belief that the juvenile justice system could not adequately rehabilitate Brown as reasons for having the boy tried as an adult.

The woman was shot six times at close range. Less than a day later, Brown, then 13, was arrested. Solicitor Henry Raines requested the boy be tried as an adult, and two judges, one a circuit judge and one a family court judge, agreed with him.

But three weeks ago Circuit Judge Howard Ballenger, acting on a motion from defense attorneys, sent the case back to the Family Court for a new jurisdictional hearing.

The defense attorneys contended they did not have time to prepare a case against transferring Brown to General Sessions Court.

Normal procedure calls for youths under age 17 to be tried in family court.

But juveniles accused of serious crimes such as murder often are sent to general sessions court.

I. Correlative Literature:

"Youth and the Law"
Justice In American Series
Houghton-Miflin Company
Boston-Atlanta-Dallas-Paloalto

Juvenile Justice
Law Related Education Program for the Schools of Maryland, Inc.

Juveniles and the Law
Xerox Education Publications
1250 Fairwood Avenue
Columbus, Ohio 43216

The Cheated Children
South Carolina Council for Human Rights
Columbia, S. C.

Teenagers and the Law
John Paul Hanna
Ginn and Company
Boston, Mass. 02117

UPDATE: Magazine on Law Related Ed.
"Discipline and Due Process in the Schools"
American Bar Association
1155 East 60th Street
Chicago, Illinois 60637

J. Interesting Statutes and cases:

DUE PROCESS

1. In re Gault 387 V. S. 1, 875 C't. 1428, 18 L.Ed., 2d 527 (1967)

Procedural Posture: Appeal from a judgment of the Arizona Supreme Court affirming the dismissal of a petition for a writ of habeas corpus. Petition sought release of Gerald F. Gault, appellants' 15-year old son who had been committed as a juvenile delinquent to the State Industrial School by the Juvenile Court in Gila County Arizona.

FACTS:

On Monday morning, June 8, 1964. Gerald Gault and a friend, Ronald Lewis were taken into custody by the Sheriff of Gila County because a neighbor of the boys, Mrs. Cook, complained that she had received an indecent phone call. At that time, Gerald was still subject to probation for having been with a boy who had stolen a wallet from a lady's purse.

Gerald's parents were at work when he was taken into custody and no attempt was made to get word to them. He was taken to the Children's Detention Home. He wasn't home when his mother got there, so she sent his older brother to look for him. The Lewis's told him where the Sheriff had taken him. He told his mother and they both went to the Home. They were told that a hearing would be held the next afternoon at Juvenile Court.

An officer filed a petition the next day, but the Gaults were never given a copy. At the hearing, no one was sworn, no transcript or record was made and the woman who complained of the phone call, Mrs. Cook did not appear. Two months later at the habeas corpus proceeding, there was a conflict in the testimony of those present at the first hearing as to what was said by Gault. At the end of the hearing the judge said he would "think about it" and Gerald was taken back to the Detention Home. On June 11 or 12, three or four days after he had been picked up, Gerald was released and sent home, without explanation of why he was kept in the home or why he was released. Mrs. Gault received a notice signed by Officer Flagg, deputy probation officer, to the effect that further hearings would be held on June 15. Again Mrs. Cook was not present. When Mrs. Gault asked that she be present, the judge told her that Mrs. Cook didn't have to be present. At the close of this hearing, the judge committed Gerald as a juvenile delinquent to the State Industrial School "for the period of his minority" --until age 21.

In Arizona, no appeal is permitted in juvenile cases.

Issue: Whether the Arizona law as applied violated Due Process.

The law which Gerald was found to have violated (using obscene language in the presence of a woman or child) was a misdemeanor, which carried a penalty for adults of $5 - $50 or imprisonment for not more than two months. The appellants want the Juvenile law of Arizona as applied here declared invalid because it violated the Due Process Clause of the Fourteenth Amendment of the U. S. Constitution when the juvenile is taken from the custody of his parents and committed to a state institution pursuant to proceedings in which the Juvenile Court has virtually unlimited discretion, and in which the

following basic rights are denied:

1. Notice of the charges
2. Right to counsel
3. Right to confrontation and cross-examination
4. Privilege against self-incrimination
5. Right to a transcript of the proceedings
6. Right to appellate review

The problems presented by this case relate to proceedings by which a determination is made as to whether a juvenile is a "delinquent" as a result of alleged misconduct on his part, with the consequence that may be committed to a State institution. The Due Process Clause has a part to play here, but how.

Juvenile Courts are more informed than adult courts, with the judge as a "father figure to the wayward youth." But unbridled discretion, crowded court calendars and loose procedure has resulted in unfairness to individuals or inaccurate findings of fact. If Gerald had been 18 he would have had counsel, fair procedure and a minimal sentence. At 15, he had no right to fair procedure and was sentenced to a state institution for a maximum of 6 years.

Issue: Notice of Charges

Holding: Due Process requires timely notice in advance of a hearing and of the specific issues the juvenile and his parents must meet.

Issue Right to Counsel: Need:

"We conclude that the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to be represented by counsel retained by them or if unable to afford counsel, that counsel will be appointed to represent the child.

Issue: Confrontation, Self-Incrimination, Cross-examination

Ques. 1.: Whether Gerald's admission was improperly obtained and unconstitutionally the basis of dicision - Yes.

Holding: The Constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults.

Major Holding: Absent a valid confession, a determination of delinquency and an order of commitment to a state institution cannot be sustained in the absence of sworn testimony subjected to the opportunity for cross-examination in accordance with our law and constitutional requirements.

Result: Reversed.

2. Kent v. U. S. 401 F. 2d. 408 (1968)

WAIVER CRITERIA:

"The determinative factors which will be considered by the Judge in deciding whether the Juvenile Court's jurisdiction over such offenses will be waived are the following:

a. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.

b. Whether the alleged offense was committed in an aggressive, violent, premediated or willful manner.

c. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.

d. The prosecutive merit of the complaint, i. e., whether there is evidence upon which a Grand Jury may be expected to return an indictment (to be determined by consultation with the U. S. Attorney.)

e. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the U. S. District Court for the District of Columbia.

f. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.

g. The record and previous history of the juvenile, including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions.

h. The prospects for adequate protection of the public and the liklihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court."

3. In re Winship 397 US 358 (1970)

DUE PROCESS:

"During a 1967 adjudicatory hearing a judge in that court found that Winship, then a twelve year old boy, had entered a locker and stolen $112.00 from a woman's pocketbook. The judge acknowledged that the proof might not establish proof beyond a reasonable doubt, but rejected the contention that such proof was required by the Fourteenth Amendment. The judge relied on another section of the act which provides "any determination at the conclusion of an adjudicatory hearing that a juvenile did an act or acts must be based upon a preponderance of evidence. During a subsequent dispositional hearing, Winship was order placed in a training school which could continue for a maximum of six years."

Juveniles were given the right to proof beyond a reasonable doubt as a result of this case.

4. McKeiver v. Pennsylvania 402 US 528 (1971)

JURY TRIAL:

"Two boys who had been represented by counsel each had requested trial by jury and were denied this type of proceeding. The US Supreme Court affirmed by arguing that trial by jury in the juvenile system would nullify the need for a separate system. The Court point to the fact that the helping nature of the juvenile court would change to the adversary nature of the adult system. As a final point, the Court stated that the juvenile court is a civil proceeding not criminal."

Vocabulary/Concept List:

1. Adjudication: the formal giving, pronouncing, or recording of a judgment based on evidence presented.
2. Juvenile: someone who has not reached his or her 18th birthday.
3. Intake: an interview conducted to determine whether a given juvenile case should be taken for an adjudication.
4. Disposition: final settlement or result.
5. Restitution: giving something back; making good for something.
6. Child Abuse: non accidental harm done to a child by his parents, guardian or any other person charged with his/her welfare. It can include shaking, beating, burning, incest, and excessive yelling or belittling...any act which results in physical or mental injury to the child. Physical discipline is not considered child abuse as long as it is moderate and does not cause lasting damage to the child.
7. Waiver: the process whereby a juvenile court judge gives up his jurisdiction and transfers a juvenile to adult court to be tried as an adult.
8. Status Offender: one guilty of a crime because of his status as a juvenile, e.g. runaways. Runaway adults are not guilty of the crime of running away.
9. Minimum sentencing: currently most youthful offenders are given an indeterminate sentence for rehabilitation. A minimum sentence requires the offender to remain in jail or detained at least a certain amount of time.
10. Rehabilitation: to equip an offender with the means for an honest productive life once released.
11. Parens Patriae: the duty or right of the government to take care of minors and others who cannot legally take care of themselves.

WAYS OF THE LAW

LESSON 9

FAMILY LAW

(DOMESTICS)

LESSON 9

Family Law (Domestic Relations)

I. OBJECTIVES:

Students will be aware of life's Family Law issues.

Students will appreciate the importance of careful planning in making family decisions.

II. LESSON CONTENT:

The pages of a family album labeled, "Domestic Relations," turn to reveal life's family law issues. When the page labeled "Marriage" turns we see a young couple debating whether or not to marry.

We go with them to church to talk with her minister and then to the marriage license bureau.

Next, the album turns to "custody" as an issue. A young girl overhears an argument her parents have wherein they decide to divorce. A few days later, they explain how the family court judge will decide which parent will take custody of her.

A page labeled "Paternity Suits" turns to show an unwed mother as she talks to an attorney. She finds out that she may be able to sue the father of her child and force him to help with her support.

The adoption insert reveals a young couple who can't have children. They decide to adopt a boy and a girl.

Next, the album turns to "Divorce" as a young woman and her mother discuss the daughter's impending divorce.

Finally, the album's pages reveal a "settlement conference". The lawyers for a husband and wife debate how money, property and children will be divided. A family court judge listens and decides.

III. UTILIZATION

Pre-Telecast Activities:

A. Have your students discuss the pros and cons of teenage marriage.

B. Marry two of your students by conducting a mock marriage with classroom participation. Ask a local minister or magistrate to assist you.

C. Have your students become familiar with the vocabulary/concept list.

Post-Telecast Activities:

A. Invite a local minister to your classroom to discuss family issues and problems.

B. Invite a family counselor, marriage counselor or psychologist to your class to discuss family issues and problems.

C. Invite an attorney who practices family law to your class to discuss domestic relations issues.

D. Invite a family court judge to discuss Domestic issues with your class.

E. Go on a field trip to the local family court or to the probate court's marriage license bureau.

F. Stage a mock divorce proceeding with the help of a local family court judge or domestics attorney.

G. Issues for Discussion:

1. Why are teen pregnancies on the increase throughout the U. S.?
2. Who should bear the responsibility for an unwanted teen pregnancy? The boy, the girl or both?
3. What problems are generated by a child pregnancy for the mother, the child, the parents, the father?
4. Has divorce become too easy?
5. Who should get the children when a family breaks up?

H. Correlative Literature:

Street Law (A course in Practical Law)
National Stree Law Institute
St. Paul, Minnesota
West Publishing Company

Movie:
"Kramer v. Kramer".

Our Legal Heritage
Alabama State Dept. of Education
Silver Burdext Company
Morristown, New Jersey

Cases on Domestic Relations
University Casebook Series
Mineola, N. Y.
The Foundation Press, Inc.

I. Interesting Cases and Statutes:

Statutes:

1. S. C. Code of Laws, Vol. 22, Chap. IV, Rule 9: "(Private conference with children in custody cases.) 9. Where the parents are separated and there is an issue of child custody, the Judge shall have the right within his discretion, to talk with the children in private conference. At such conference, if the parents are represented by attorneys, the attorneys in the discretion of the court, may be present if they request permission to be present."

2. (Rule 10) "Exclusion of children from courtroom--children as witnesses as to misconduct of parent"

"10. Generally, in actions of parents against each other, or where the conduct of either parent is an issue, the children should not be allowed in the courtoom during the taking of the testimony. Nor should children be offered as witnesses as to the misconduct of either parent, except, however, that in certain cases where the children are offered as witnesses to testify as to acts of either parent and if the child's testimony appears to be essential to establish the acts alleged, such testimony shall be admissible."

3. (Rule 15) "Orders respecting care, custody and support of children and/or support of wife, and visitation"

"15. In the following actions the Court may, at any stage of the cause, or from time to time after final judgment, make such Orders respecting the care, custody and support of children and/or support of wife, and the time and manner of visitation as may be fit, equitable and just (1) divorce, a vinculo matrimonii, and a mensa et thoro, (2) by husband or wife to live separate and apart from the other, (3) by wife for separate maintenance, (4) for custody of children, child support, right of visitation and division of personal property, whether the same be in connection with an action for divorce or apart therefrom."

4. (Rule 19) "Reconciliation efforts"

"19. In all actions for divorce or for legal separation, the Judge shall make an earnest effort to bring about a reconciliation between the parties unless the circumstances are such that reconciliation is impossible."

5. See Generally Title 20, "Domestic Relations", S. C. Code of Laws, Vol.8.

6. § 20-1-10."Persons who may contract matrimony."

"All persons, except mentally incompetent persons, and persons whose marriage is prohibited by this section, may lawfully contract matrimony. No man shall marry his mother, grandmother, daughter, grand-daughter, step-mother, sister, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's daughter, father's sister or mother's sister.

No woman shall marry her father, grandfather, son, grandson, stepfather, brother, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's

grandson, brother's son, sister's son, father's brother or mother's brother."

HISTORY: 1962 Code §20-1; 1952 Code §20-1; 1942 Code §8556; 1932 Code §8556; Civ. C. '22 §5522; Civ. C. '12 §3743; Civ. C. '02 §2658; G. S. 2026; R.S. 2157; 1712 (2) 476; 1961 (52) 47.

7. §20-1-80. "Bigamous marriages shall be void; exceptions."

"All marriages contracted while either of the parties has a former wife or husband living shall be void. But this section shall not extend to a person whose husband or wife shall be absent for the space of seven years, the one not knowing the other to be living during that time, nor to any person who shall be divorced or whose first marriage shall be declared void by the sentence of a competent court."

HISTORY: 1962 Code §20-6; 1952 Code §20-6; 1942 Code §8568; 1932 Code §8568; Civ. C. '22 §5533; Civ. C.'12 §3754; Civ. C. '02 §2661; G. S. 2029; R. S. 2160; 1712 (2) 203.

8. §20-1-210. "License Required For Marriage"

"It shall be unlawful for any persons to contract matrimony within this State without first procuring a license as is herein provided and it shall likewise be unlawful for anyone whomsoever to perform the marriage ceremony for any such persons unless such persons shall first have delivered to the party performing such marriage ceremony a license as is herein provided duly authorizing such persons to contract matrimony. Any officer or person performing the marriage ceremony without the production of such license shall, on conviction thereof, be punished by a fine of not more than one hundred dollars nor less than twenty-five dollars or by imprisonment for not more than thirty days nor less than ten days."

HISTORY: 1962 Code §20-21; 1952 Code §20-21; 1942 Code §8557; 1932 Code §8557; Civ.C.'22 §5523; Cr. C.'22 § 379; Civ.C. '12 § 3744; 1911 (27) 131; 1945 (44) 62.

9. §20-1-250. "Applicants under age of consent; consent of relative or guardian."

"No such license shall be issued when the woman or child woman is under the age of fourteen or when the male is under the age of sixteen, provided that when the female applicant is between the ages of fourteen and eighteen and when the male applicant is between the ages of sixteen to eighteen and when the applicant resides with father or mother, or other guardian, the probate judge or other officer authorized to issue marriage licenses shall not issue a license for the marriage until furnished with a sworn affidavit signed by such father, mother, or other relative or guardian giving his or her consent to the marriage."

HISTORY: 1962 Code §20-24; 1952 Code §20-24; 1942 Code §8558; 1932 Code §8558; Civ. C.'22 §5524; Civ.C.'12 §3745; 1911 (27) 131; 1912 (27) 613; 1913 (28) 76; 1915 (29) 216, 220; 1916 (29) 751; 1917 (30) 113, 127, 129; 1918 (30) 698; 1919 (31) 67, 112, 211, 245; 1920 (31) 736, 738, 1065; 1921 (32) 107, 152; 1922 (32) 781, 790; 1928 (35) 1205; 1931 (37) 12, 29, 122; 1933 (38) 148; 1934 (38) 1425; 1939 (41) 173, 179; 1946 (44) 1444; 1947 (45) 109, 234; 1948 (45) 1612; 1955 (49) 126; 1957 (50) 306.

10. § 20-3-10. "Grounds For Divorce"

"No divorce from the bonds of matrimony shall be granted except upon one or more of the following grounds, to wit:

(1)Adultery;
(2)Desertion for a period of one year;
(3)Physical Cruelty;
(4)Habitual drunkenness; "provided", that this ground shall be construed to include habitual drunkenness caused by the use of any narcotic drug; or
(5)On the application of either party if and when the husband and wife have lived separate and apart without cohabitation for a period of three continuous years. A plea of res judicata or of recrimination with respect to any other provision of this section shall not be a bar to either party obtaining a divorce on this ground."

HISTORY: 1962 Code §20-101; 1952 Code §20-101; 1949 (46) 216; 1952 (47) 2142; 1969 (56) 172.

11. §20-3-160. "Care, custody and maintenance of children"

"In any action for divorce from the bonds of matrimony the court may

at any stage of the cause, or from time to time after final judgment, make such orders touching the care, custody and maintenance of the children of the marriage and what, if any, security shall be given for the same as from the circumstances of the parties and the nature of the case and the best spiritual as well as other interests of the children may be fit, equitable and just."

HISTORY: 1962 Code §20-115; 1952 Code §20-115; 1949 (46) 216.

12. §20-7-20. "Cruelty to children"

"Whoever tortures, torments, cruelly ill-treats, deprives of necessary sustenance or shelter or inflicts unnecessary pain or suffering upon any child or causes the same to be done, whether such person be the parent or guardian or have charge or custody of such child, shall for every such offense, be guilty of a misdemeanor and be punished by imprisonment in jail not exceeding thirty days or by fine not exceeding one hundred dollars. All the provisions of Chapter I of Title 47 in reference to the prevention of cruelty to animals shall be extended to the enforcement of this section."

HISTORY: 1962 Code §20-302; 1952 Code §20-302; 1942 Code §1125; 1932 Code §1125; Cr. C.'22; Cr. C. '12 §167; Cr. C. '02 §136; 1892 (21) 3.

CASES:

1. Shull v. Shull, (1974 SC) 206 SE 2d 871.
2. Rogers v. Rogers, 260 SC 213, 197 SE 2d. 921 (1973)
3. Fryer v. Fryer, Rich Cas (q SC Eg) 85.

"Marriage is a civil contract, whereby the parties take each other in praesenti for man and wife."

4. State v. Rogers, 112 SC 466, 100SE 143 (1919)

5. State v. Ward, 204SC 210, 285 E 2d. 785 (1944).

"Marriage by parties under the age limit is not void...if a marriage is entered into when one of both of the parties is under the age limit prescribed, the marriage is not void.

6. Darden v. Witham, 258 SC 380, 188 S.E. 2d. 776 (1972)

"An award of period payments of alimony may be modified by the court upon a showing of altered circumstances...Divorced husband's obligation to pay court—awarded alimony terminates upon wife's remarriage."

7. Goff v. Benedict, 165 S.E.2d. 269 (SC 1969).

8. Anonymous v. Anonymous 530 P. 2d. 896 (1975)

9. Re Adoption of Gambione, 262 S. 2d. 566 (1962)

10. Huebert v. Marshall, 270 N.E. 2d. 464 (1971)

J. Vocabulary/Concept List:

1. Adoption: to take a child of another as your own, with all the rights and duties there would have been if it had been your own child originally.
2. Paternity Suit: A court action to prove a person is the father of an illegitimate child and to enforce support obligations.
3. Divorce: The ending of marriage by court order. Grounds for divorce include adultery, physical cruelty, desertion, habitual drunkenness.
4. No fault divorce: can be obtained when the husband and wife live separate and apart for a given period of time. Divorce without one party or the other being at fault.
5. Settlement Conference: a meeting at which a separation agreement is drawn up.
6. Child abuse: physically or phychologically injuring a child.
7. Custody: care and posession of a child.
8. Separation Agreement: an agreement in which the parties to a divorce decide who the children will live with, who will pay the costs of raising the children,

whether alimony will be paid, and how the property will be divided.

9. Alimony: Court ordered payments by one divorced spouse to his or her divorced spouse.

10. Spouse: one's husband or wife

11. "Best interest of the child"-- the over-riding standard by which all family court decisions concerning children are made.

WAYS OF THE LAW

LESSON 10

WILLS AND ESTATES

LESSON 10

Wills and Estates

I. OBJECTIVES:

Students will understand the consequences of leaving or not leaving a will.

II. LESSON CONTENT:

The program opens with our protagonist, Mr. Intestate, stuck in Purgatory trying to figure out where he is. He is soon informed of his whereabouts and that he will be able to take one last look at his family. He remembers that he was in a car accident with Mr. Testate and proceeds to find him. They must wait for two other Purgatorians before they see their families. The first family situation portrays a man who died without a will, leaving a wife. His wife is informed that his drunken half brother will take half the estate. The second situation reveals a man who left a will but failed to update it to take care of changed circumstances. He should have added a codicil to the will.

Next, Mr. Testate takes a look at his family. He left a will which has been probated and which left provisions for his kids to go to college. Then, Mr. Intestate sees his family and learns that his son is going to sell his prized antique bottle collection to meet the debts of his estate. Mr. Intestate is awakened from this nightmare and runs to his lawyer's office to have a will written.

III. UTILIZATION:

Pre-Telecast Activities

A. Ask your students if they know whether or not their parents have wills.

B. Have the students become familiar with the vocabulary/concept list.

Post-Telecast Activities

A. Invite the local county probate judge to your classroom to explain the process of probate.

B. Go on a field trip to the probate court.

C. Ask students the pros and cons of leaving a will.

D. Read over the interesting statutes and other attached materials and ask the Probate Judge or a lawyer whom you invite to your class to explain them.

E. Warn students that the attached will is only a sample and is not to be used. One should consult a lawyer before writing a will.

F. Invite a local attorney or bank officer to class to discuss Estate Planning.

G. Correlative Literature:

1. Our Legal Heritage
   Alabama State Dept. of Education
   Silver Burdett Company
   Morristown, New Jersey

2. Street Law (A Course in Practical Law)
   National Street Law Institute
   St. Paul, Minnesota
   West Publishing Company

3. Wills
   Coleman Karesh
   South Carolina Bar Publishers
   Columbia, South Carolina

H. Interesting Statutes:

S. C. Code §§ 21-3-20, 30, 40, 50, 60, 70

CHAPTER 3

Descent and Distribution

Sec.
21-3-10. Primogeniture abolished.
21-3-20. Intestate distribution; presumptions as to missing persons.
21-3-30. Inheritance by or from illegitimates.
21-3-40. Inheritance by or from illegitimates prior to passage of § 21-3-30.
21-3-50. Distribution of a joint tenancy.
21-3-60. Effect of advance on distribution.
21-3-70. Effect of provision for widows on dower.

§ 21-3-10. Primogeniture abolished.

The right of primogeniture is abolished.

HISTORY: 1962 Code § 19-51; 1952 Code § 19-51; 1942 Code § 8905; 1932 Code § 8905; Civ. C. '22 § 5326; Civ. C. '12 § 3554; Civ. C. '02 § 2467; G. S. 1844; R. S. 1979; 1791 (5) 162.

CASE NOTES

Stated in Gibson v Rikard, 143 SC 402, 141 SE 726 (1928).

Cited in Simpkins v Lumbermens Mut. Cas. Co., 200 SC 228, 20 SE2d 733 (1942).

§ 21-3-20. Intestate distribution; presumptions as to missing persons.

(1) If the intestate shall leave a widow and more than one child the widow shall take one third of the estate and the remaining two thirds shall be divided equally among the children; but if the intestate shall leave a widow and only one child then the widow shall take one half of the estate and the child shall take the remaining one half of such estate.

The lineal descendants of the deceased shall represent their respective parents and shall take among them the share or shares to which their parents would have been entitled had such parent survived the intestate.

(2) If the intestate shall leave no child or other lineal descendant but shall leave a widow and a father and mother and brothers and sisters or brother or sister of the whole blood, the estate, real and personal, of such intestate shall be distributed in the following manner, that is to say: The widow shall be entitled to one moiety thereof and the other moiety shall be equally divided amongst the father and the mother and the brethen of the whole blood, so that

81

such father and mother and each brother and sister shall receive an equal share thereof. The children of a deceased brother or sister of the whole blood shall take among them the share which their parent would have been entitled to had such parent survived the intestate; *provided*, that there shall be no representation admitted among collaterals after the brothers' and sisters' children. If the intestate leave no father and mother the provision made in this item for such parents shall go as the rest of the estate is directed to be distributed herein. If the intestate shall not leave a child or other lineal descendant or brothers or sisters, one or more, of the whole blood or children of a brother or sister of the whole blood but shall leave a widow and a father and mother, the widow of the intestate shall be entitled to one moiety of the estate and the father and the mother to the other moiety; and if either father or mother be dead such moiety shall go to the survivor of them.

(3) If the intestate shall not leave a lineal descendant, father or mother, but shall leave a widow and brothers and sisters or a brother or sister of the whole blood the widow shall be entitled to one moiety of the estate and the brothers and sisters or brother or sister to the other moiety as tenants in common. The children of a deceased brother or sister shall take among them respectively the share which their respective ancestors would have been entitled to had they survived the intestate.

(4) If the intestate shall leave no child or other lineal descendant, father, mother, brother or sister of the whole blood, but shall leave a widow and brother or sister of the half blood and a child or children of a brother or sister of the whole blood, the widow shall take one moiety of the estate and the other moiety shall be equally divided between the brothers and sisters of the half blood, and the children of the brothers and sisters of the whole blood, the children of every deceased brother and sister of the whole blood taking among them a share equal to the share of a brother or sister of the half blood. If there be no brother or sister of the half blood then a moiety of the estate shall descend to the child or children of the deceased brother or sister of the whole blood, taking by representation of the parent, and if there be no child of a brother or sister of the whole blood, then said moiety shall descend to the brothers and sisters of the half blood.

(5) If the intestate shall leave no child or other lineal descendant, father, mother, brother or sister of the whole blood or their children or brother or sister of the half blood, then the widow shall take one moiety, and the lineal ancestor, if any there be, the other moiety.

(6) If the intestate shall leave no child or other lineal descendant, father, mother, brother or sister of the whole blood, nor child of such brother or sister of the whole blood, nor brother or sister of the half blood, or lineal ancestor, the widow shall take the entire estate. If the intestate shall leave no widow the estate shall descend in equal parts to the uncles and aunts, the children of a deceased uncle or aunt to take among them the share to which their parent would have been entitled had such parent survived the intestate. If there be no uncle, aunt or child of a deceased uncle or aunt, then the estate shall descend to the next of kin.

In reckoning the degrees of kindred, the computation shall begin with the intestate and be continued up to the common ancestor and then down to the person claiming kindred inclusively, each step inclusively being reckoned as a degree.

(7) If the intestate shall leave no widow the provision made for her shall go as the rest of the estate is directed to be distributed in the respective clauses in which the widow is provided for.

(8) On the death of a married woman intestate the husband shall be entitled to the same share of her estate as is herein given to the widow out of the estate of the husband and the remainder of her estate shall be distributed among her descendants and relations in the same manner as is directed in case of the intestacy of a married man.

If the intestate leave no husband, the provision herein made for him shall go as the rest of the estate is directed to be distributed in the preceding clauses.

(9) If any married person shall die without leaving any child or other lineal descendant, father, mother, brother or sister of the whole blood or their children, brother or sister of the half blood, lineal ancestor or next of kin then the wife shall inherit from the husband and the husband from the wife the whole of the real and personal estate of which the other died seized or possessed or was interested in or entitled unto.

(10) If any person shall die without leaving any spouse, child or other lineal descendant, father, mother, brother or sister of the whole blood, or their children, brother or sister of the half blood, lineal ancestor or next of kin but shall leave surviving a stepchild or stepchildren then such stepchild or stepchildren shall inherit from the decedent the whole of the real and personal estate as tenants in common.

(11) Whenever any person shall be presumed dead by reason of disappearance or long unexplained absence under the common-law rule in this State and such person shall have been unmarried at the time of such disappearance and when last heard from, then

such person shall further be presumed to have died intestate, unmarried and without issue.

HISTORY: 1962 Code § 19-52; 1952 Code § 19-52; 1942 Code § 8906; 1932 Code § 8906; Civ. C. '22 § 5327; Civ. C. '12 § 3555; Civ. C. '02 § 2468; G. S. 1845; R. S. 1980; 1797 (5) 49; 1826 (6) 284; 1920 (31) 873; 1945 (44) 313; 1949 (46) 281; 1955 (49) 309; 1964 (53) 2181.

Research and Practice References—

23 Am Jur 2d, Descent and Distribution §§ 41 et seq.

26A CJS, Descent and Distribution §§ 19 et seq.

8 Am Jur Pl & Pr Forms (Rev ed), Descent and Distribution, Forms 1 et seq. (pleadings and orders for determination of heirship).

"Devolution of Interests in Trust Estates," 1 SCLQ 367 (1949).

"Widow's Election Between Dower and Other Benefits," 9 SCLQ 277 (1957).

Estate Planning and the Law of Wills and Inheritance for South Carolina Farmers, 12 SCLQ 491.

ALR and L Ed Annotations—

Provision for post-mortem payment or performance as affecting enforceability as contract of family settlement or other agreement between heirs or legatees, 1 ALR2d 1270.

Right of heir in respect to improvements not completed, 5 ALR2d 1250.

Descent and distribution to nieces and nephews as per stirpes or per capita, 19 ALR2d 191.

Relative rights to real property as between purchasers from or through decedent's heirs and devisees under will subsequently sought to be established, 22 ALR2d 1107.

Time of ascertainment of settlor's heirs and distributees to take on failure of the trust, 27 ALR2d 691.

Felonious killing of ancestor as affecting intestate succession, 39 ALR2d 477.

Relative rights in real property as between purchasers from or through decedent's heirs or devisees and unknown surviving spouse, 39 ALR2d 1082.

Construction, application, and effect of statutes providing for descent of property of surviving spouse which had been derived from earlier deceased spouse, 49 ALR2d 391.

Descent and distribution to and among cousins, 54 ALR2d 1009.

Solid mineral royalty as real or personal property for purposes of descent and distribution, 68 ALR2d 732.

Conflict of laws as to legitimacy or legitimation or as to rights of illegitimates, as affecting descent and distribution of decedent's estate, 87 ALR2d 1274.

Rights in growing, unmatured annual crops as between personal representatives of decedent's estate and heirs or devisees, 92 ALR2d 1373.

Right of heir or devisee to have realty exonerated from lien thereon at expense of personal estate, 4 ALR3d 1023.

Abandonment, desertion, or refusal to support on part of surviving spouse as affecting marital rights in deceased spouse's estate, 13 ALR3d 446.

Adultery on part of surviving spouse as affecting marital rights in deceased spouse's estate, 13 ALR3d 486.

Family settlement of intestate estate, 29 ALR3d 174.

CASE NOTES

1. In general.
2. Validity.
3. Rules of construction.
4. Determining lineal consanguinity.
5. Federal estate tax.
6. Estates distributable under section; illustrative cases.
7. Meaning of "any person"; "heritable blood".

H. Vocabulary/Concept List:

1. Will - A legal declaration of how a person wants his possessions disposed of after his death.
2. Intestate - A person who dies without writing a will.
3. Administrator/Administratrix-collects manages and distributes the estate of one who dies without a will. He satisfies claims of creditors, next of kin, and any other parties with a claim on the estate.
4. Estate - The interest anyone has in lands or any other subject of property.
5. Testate - One who dies leaving a valid will.
6. Executor/Executrix - collects, manages and distributes the estate of one who dies with a will.
7. Purgatory - A place in which the souls of those who died in grace must expiate their sins.
8. Probate - The act or process of proving a will.
9. Life Estate - An estate whose duration is limited to the life of the person holding it or to the life of some other person.
10. Trust - A right of property real or personal held by one person for the benefit of another.
11. Real Property - Land or generally whatever is growing upon or affixed to the land.
12. Personal Property - Everything that is the subject of ownership not coming under the denomination of real property.

13. Codicil - a suppplement or an addition to a will; it may explain, modigy, add to, subtract from or revoke provisions in a will.

I. Attachments

Last Will and Testament

Petition for Letters of Administration and Order for Citation to Issue

Letters of Administration

Inventory and Appraisement of Personal Property of the Estate

Oath of Fiduciary

Letters of Dismissory

STATE OF SOUTH CAROLINA)
) LAST WILL AND TESTAMENT
COUNTY OF SPARTANBURG)

I_____being of sound and disposing mind, memory and understanding hereby make and declare this to be my Last Will and Testament.

ITEM I. I direct that all my just debts be paid as soon as practical after my death.

Item II. I will devise and bequeath to my beloved wife_____all my property, both real and personal, absolutely in fee simple.

Item III. I hereby nominate, constitute and appoint _____as executrix of this my Last Will and Testament and request that she serve without bond.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this_____day of_____1971.

_____ (SEAL)

SIGNED, SEALED, PUBLISHED AND DECLARED by _____ _____as and for his Last Will and Testament in the presence of us who at his request, and in his presence, and in the presence of each other, do hereby subscribe our names as witnesses.

_____ _____

_____ _____

_____ _____

WARNING: DO NOT COPY THIS WILL FOR YOUR OWN PERSONAL USE. IT MAY BE INCORRECT FOR YOUR CIRCUMSTANCES OR INVALID UNDER YOUR STATE LAWS. CONSULT A PRIVATE LAWYER OR A LEGAL AID OFFICE FOR ADVICE ON MAKING A WILL.

BEST COPY AVAILABLE

STATE OF SOUTH CAROLINA
County of Spartanburg

Ex Parte .....
Petitioner.

In Re Estate Of:
Deceased.

IN THE PROBATE COURT
PETITION FOR LETTERS OF ADMINISTRATION
AND ORDER FOR CITATION TO ISSUE

To J. Wm. Davenport, Probate Judge for said County:

The Petition of the undersigned respectfully represents:

1. That ..... Age ..... who last dwelt in ..... in said County of ..... State aforesaid, died intestate on the ..... day of ..... in the year of our Lord one thousand nine hundred and ..... possessed of goods and estate remaining to be administered, leaving ..... as h ..... only heirs at law and next of kin, the following:

(Show by subdivision into family group the names of persons taking through any predeceased heir at law.)

Name	Age*	Residence	Relationship to Decedent

*Know the exact age at date of decedent's death if then living; if not then living, enter in the age column the word "dead".

2. That the intestate died seized and possessed of a personal estate of about the value of ..... ($ .....) Dollars consisting of the following moneys, goods and chattels:

(a)	Cash on hand and in banks	$
(b)	Moneys due intestate on account of bonds, mortgages and other securities	$
(c)	Corporate and governmental bonds and stocks	$
(d)	Open accounts due intestate	$
(e)	Goods, wares, merchandise, furniture, machinery and equipment used in profession, trade or business	$
(f)	Household goods	$
(g)	Farming implements, machinery and equipment	$
(h)	Farm products	$
(i)	Mules, horses, cattle, hogs, sheep, etc.	$
(j)	Automobiles, auto trucks, motorcycles, etc.	$
(k)	Jewelry, silver plate, watches and other personal effects	$
(l)	Life or other insurance made payable to the estate	$
(m)	Value of all other personal property not listed above	

(OVER)

This form revised by the South Carolina Tax Commission November 1, 1961.
(To be used in all cases where the decedent died after December 31, 1961.

LETTERS OF ADMINISTRATION

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

By J. Wm. Davenport, Judge of the Probate Court

To _____

WHEREAS, _____ late of Spartanburg County, deceased. lately died intestate, having whilst _____ lived and at the time of _____ death, divers goods, rights and credits, within the State aforesaid, by means whereof the full disposition and power of granting the administration of all and singular the goods, rights and credits, of deceased, and also auditing the accounts, calculations and reckonings of the said administration; and a final dismission of the same, to me, is manifestly known to belong, I, desiring that the goods, rights and credits of the said deceased, may be well and truly administered, converted and disposed of, do hereby grant unto the said _____

in whose fidelity, in this behalf, I very much confide full power, by the tenor of these presents, to administer the goods, rights and credits of the said deceased which to h in h life-time and at the time of h death, did belong and to ask, levy, recover and receive the same, and to pay the debts to which the deceased stood obligated, so far as h goods, rights and credits will extend, according to their rate and order of law, being first sworn on the Holy Evangelists of Almighty God, to make a true and perfect inventory thereof, and to exhibit the same in the Judge of Probate's office in Spartanburg in order to be recorded on or before the _____ day of _____ now next ensuing, and to render a just and true account, calculation and reckoning of the said administration, when thereunto required; And I do ordain, depute and constitute you, the said _____

_____

Administrat _____ of all and singular the goods, rights and credits of the said deceased _____

IN TESTIMONY WHEREOF, I have hereunto set my Hand and Seal the _____ day of _____ in the year of our Lord one thousand nine hundred and _____, and in the _____ year of the Sovereignty and Independence of the United States of America _____.

_____
Judge, Probate Court.

89

BEST COPY AVAILABLE

(NOTE: If necessary, attach additional sheets to this return following same ruling as is set up herein.)

INVENTORY AND APPRAISEMENT OF PERSONAL PROPERTY OF THE ESTATE

OF _____ DECEASED

ITEM 2
The Personal Representative is to complete Item 2, as to "Face Value" and deliver this Inventory to the Appraisers, who shall complete Item 2, as to "Appraised Value"

ARTICLES	FACE VALUE	APPRAISED VALUE
Cash on hand at death		
Cash in banks, depositories, etc. (attach schedule)		
Life Insurance payable to estate (attach schedule)		
TOTAL:		

INVENTORY AND APPRAISEMENT OF REAL ESTATE OF ESTATE

OF _____ DECEASED

ITEM 3:
The Personal Representative is to insert description of property under Item 3, and the Appraisers are to complete this form in detail.

	1	2	3	4
DESCRIPTION (Show County, Township and School District)	ASSESSED VALUE FOR YEAR OF DECEDENT'S DEATH	APPRAISED VALUE	APPRAISED VALUE OF DECEDENT'S INTEREST	CAUTION (Do not write in this space)
TOTAL:				

ITEM 4:

JOINTLY OWNED PROPERTY WITH RIGHT OF SURVIVORSHIP (If None-So State)
(Sec. 65-463, S. C. Code of Laws 1952, as amended)

A. Jointly Owned United States Government Bonds With Right Of Survivorship

Face Value	Series	Exact Names in Which Standing	Value at Date of Death	Decedent's Contribution
$			$	$

B. Jointly Owned Bank Accounts, Building And Loans, And Other Depository Accounts With Right Of Survivorship

Amount	Name and Location of Institution	Exact Names in Which Standing	Decedent's Contribution
$			$

BEST COPY AVAILABLE

STATE OF SOUTH CAROLINA }
COUNTY OF }

OATH OF FIDUCIARY

Personally appeared before me

Administrat , Execut , Trustee , of the estate of

, who being duly sworn, says that the annexed Inventory is in all respects just and true, that it contains a true statement of all the real and personal property of the said deceased, whether the interest of the deceased be absolute or otherwise, which has come to the knowledge of this deponent, together with a list of all property disposed of by decedent within the last three years that may be found or adjudged to have been in contemplation of death.

Sworn to before me this day }
of , A. D., 19 }
(L. S.) }
Notary Public for South Carolina

CERTIFICATE OF APPRAISERS

(This certificate to be signed after appraisement is made.)

We, whose names are hereunder signed, appraisers, appointed by the Probate Judge of County, South Carolina, having first taken and subscribed the oath hereinbefore inserted, do certify that we have estimated and appraised the property in the annexed inventory contained, exhibited to us, according to the best of our knowledge and ability.

Dated this day of A. D., 19

}
Appraisers
}

91

BEST COPY AVAILABLE

State of South Carolina
County of Spartanburg

LETTERS DISMISSORY
In the Probate Court.

By the Honorable J. Wm. Davenport, Judge of the Probate Court for the County of Spartanburg, in the State aforesaid.

To all whom these Presents shall come---GREETING:

WHEREAS, at the Term, 19 of the Court of Probate for Spartanburg County, on the day of in the year of our Lord one thousand nine hundred and the petition of

on the estate of

deceased, late of Spartanburg County, in this State, was presented, setting forth that the duties of said

had been fully discharged, and praying to be released from same.

AND WHEREAS, the said

ha complied with Section 41 of the Code of Procedure and published, in conformity to law for at least one month, a Citation calling upon all persons concerned to show cause on or before the day of why said application should not be granted. And whereas, said Citation has been published in a newspaper of the County, for the space of one month, and no cause being shown against said application, and it appearing from an examination of the situation of the affairs of the said estate that the petitioner has faithfully and honestly discharged the trust and confidence reposed in h

NOW, KNOW ALL MEN BY THESE PRESENTS, That

is from henceforth and forever discharged and dismissed from all liability as

as aforesaid

WITNESS Honorable J. Wm. Davenport, Judge of the Probate Court for Spartanburg County, the day of in the year of our Lord one thousand nine hundred and

(L.S.)
Judge Probate Court

92

WAYS OF THE LAW

LESSON 11

CONTRACT CONSUMER LAW

(BE ASSERTIVE)

Lesson 11

Contract/Consumer Law (Be Assertive)

I. Objectives:

Students will understand how to protect their interests when making a contract.

Students will be cognizant of the components of a valid contract.

II. Lesson Content:

Four young consumers lament of the situation into which each has gotten himself by signing a bad contract.

Consumer 1 has purchased a bad used car upon which he thought he had a 90 day warranty, but the salesman can't remember the promise.

Consumer 2 signed an apartment lease without reading it. Now the roof leaks and the heat and air conditioner don't work, but she's stuck in the apartment.

Consumer 3 has paid money to attend an unacredited airline hostess school, and cannot get a refund.

Consumer 4 leased furniture hoping to pay it off after a specified amount of time. What he didn't know was that the contract could be cancelled at anytime before that date.

Next our host defines a contract and lists the components of a contract. She also introduces a dramatic scene on minor's contracts where a young man has defaulted on a loan for which his father cosigned.

After that scene the host introduces a series of scenes between a salesman and Mr. Driggers. Driggers is tricked, pressured and cajoled into signing without reading a contract. Each time the host explains why this is wrong and Mr. Driggers does it correctly the second time.

Our host next explains how some contracts such as illegal or unconscionable ones are unenforceable in court. Dramatic scenes illustrating these points follow.

In conclusion, the host lists the main points in the program and introduces three other of our original four young consumers who do it right this time.

III. UTILIZATION

Before the Telecast:

A. Americans consume more than any other people on earth. Have your students list all the things that they consume e.g. energy, records, food, clothes, and cars.

B. Have your students become familiar with the vocabulary concept list.

After the Telecast:

A. Write the Consumer Information Center in Pueblo, Colorado, 81009 and request a free copy of the " Consumer Information Catalogue".

B. Have your students bring in newspaper and magazine articles on consumer issues.

C. Have your students list the steps an assertive consumer takes before signing a contract.

D. Invite a local business man to your class to discuss consumer issues.

E. Invite a representative from the S. C. Dept. of Consumer Affairs to your class. Address: P. O. Box 11739, Columbia, SC 29211
Phone: 1-800-922-1594 or 758-2040

F. Write the S. C. Dept. of Consumer Affairs and request copies of any pamphlets they make available to the public.

G. Invite a representative of the local credit bureau to your class to explain how the organization operates.

H. Ask your students to design a role play depicting the best way to voice a consumer complaint.

Suggestions:

1. Go directly to the manager or supervisor.
2. Give your name.
3. Explain clearly and simply what the problem is.
4. Tell what it is you want done about the problem.
5. Find out when something will be done.
6. Get the name of the person you are speaking to so you will know exactly whom to contact if nothing is done.

I. Divide your class into four groups, two groups of consumers and two groups of Deceptive Salesmen.

1. Bait and Switch.

   a. The deceptive salesmen in group one devise a "bait and switch" advertising plan.

      Example: "Beautiful 21 inch Zenith Color TV. Only $300. When the customer responds the salesman says: "You don't want that TV, it has none of the latest features, but look over here at our new sets.

      They advertise one model and then talk it down when the customer arrives.

   b. Group One consumers devise an appropriate response to this sales technique.

2. Phony Contests

   a. Deceptive salesmen in Group Two devise a phony contest as a sales gimmick.

      Example: The salesman telephones consumers and informs them that each has won a free vacuum cleaner which is normally priced at $400. He can have this vacuum cleaner simply by purchasing the accessories to it which cost $200. Actually the vacuum cleaner and accessories are worth $200, their normal price.

b. The consumers devise an assertive response to this gimmick. It is illegal to use the word "free" and then require the consumer to do something in order to get the "free" item.

J. Ask your students to draft an appropriate letter of complaint.

K. Issues for discussion:

1. Does South Carolina need a Better Business Bureau?

2. When is the best time to build a good credit record? How does one go about doing this?

3. What should a consumer who thinks he has a valid complaint against a business do?

4. The Department of Consumer Affairs cannot give you information that a certain company has a history of taking advantage of consumers. A South Carolina law forbids it. Should this law be changed?

5. Is there too much government regulation of business?

6. How might customers with invalid complaints try and take advantage of a business?

L. Consumer Complaint Agencies

Listed below are the addresses of the most frequently used agencies that assist consumers in resolving their product or service disputes.

Consumer Action Panels:

Major Appliances Consumer Action Panel
20 N. Wacker Drive
Chicago, ILL 60606

Carpet and Rug Industry Consumer Action Panel
Box 1568
Dalton, GA 30720

Furniture Industry Consumer Action Panel
Box 951
High Point, NC 27161

Automobile Consumer Action Panel
U. S. Department of Health, Education, and Welfare
Office of Consumer Affairs
Washington, DC 20201 Write for address nearest AUTOCAPS Office

Federal Agencies:

Automobiles and Automotive Safety
Department of Transportation
400 Seventh Street, SW
Washington, DC 20590

National Highway Traffic Safety Administration
400 Seventh Street, SW
Washington, DC 20590

Mail Service and Sales Schemes Using the Mails
U. S. Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260

Food and Drugs:

Food and Drug Administration
U. S. Department of Health, Education, and Welfare
5600 Fishers Lane
Rockville, MD 20852

Broadcasting -- Radio and Television:

Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Product Safety:

Consumer Product Safety Commission
1750 K Street, NW
Washington, DC 20207

Household Moving Problems:

Interstate Commerce Commission
Twelfth Street and Constitution Ave.,NW
Washington, DC 20423

Unfair and Deceptive Business Practices:

Federal Trade Commission
Pennsylvania Avenue at Sixth Street
Washington, DC 20580

Consumer Affairs--General

Office of Consumer Affairs
U. S. Department of Health, Education, and Welfare
New Executive Office Building
Seventeenth and H Streets, NW
Washington, DC 20506

M. Correlative Literature:

Law and the Consumer
Justice in America Series
Houghton Mifflin Co.
Boston-Atlanta-Dallas-PaloAlto

Pamphlets and other Information
S. C. Dept. of Consumer Affairs
P. O. Box 5757
Columbia, S. C. 29250

Our Legal Heritage
Alabama State Dept. of Ed.
Silver Burdett Company
Morristown, NJ

Basic Contract Law
Fuller Eisenberg
West Publishing Co.
St. Paul, MINN

Street Law
(A Course in Practical Law)
National Street Law Inst.
West Publishing Co.
St. Paul, MINN

N. Interesting Statutes and Cases:

Statutes:

1. U. S. Constitution, Article I, Section 10-(1): "No state shall enter into any Treaty,...pass any Bill to Attainder, expost facto Law, or Law impairing the obligation of Contracts....."

2. The Civil Rights Bill of 1866 contains a clause guaranteeing every citizen the same right "to make and enforce contracts...."

3. See South Carolina Code of Laws:

§ 37-2-410, § 37-2-501, § 37-2-502, § 37-2-503, § 37-6-111, § 37-2-104, § 37-3-104, § 37-1-302, § 37-3-106, § 37-3-109, § 37-2-105-(2), §37-1-301-(12), § 37-2-108, § 37-3-108, § 37-2-105

4. § 37-3-403. No Assignment of Earnings.

(1) A lender may not take an assignment of earnings of the debtor for payment or as a security for payment of a debt arising out of a consumer loan. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the debtor. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable.

(2) A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to him secured by an assignment of earnings.

HISTORY: 1962 Code §8-800.273; 1974 (58) 2879.

5. § 37-5-106. No Discharge from Employment for Garnishment.

No employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit sale, consumer lease, or consumer loan.

HISTORY: 1962 Code §8-800.336; 1974 (58) 2879.

6. § 37-2-502. Buyer's Right to Cancel.

(1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with this part.

7. § 37-6-111. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

(1) The Administrator may bring a civil action to restrain a creditor or a person acting in his behalf from engaging in a course of

(a) Making or enforcing unconscionable terms or provisions of consumer credit sales, consumer leases, or consumer loans.

8. 1971 Federal Law- Fair Credit Reporting Act:

Under this act whenever a consumer has been denied credit on the basis of an unfavorable credit report, the creditor so denying must inform the consumer of that fact and the name of the credit bureau which supplied the report. Upon a customer's request, a credit bureau must disclose the nature and substance of its report, but the consumer does not have the right to inspect the entire file.

CASES:

1. Williams v. Walker-Thomas Furniture Co.
121 U. S. App. D. C. 315, 350 F. 2d. 445 (1965)

At different times between December, 1957 and April 1962, Mrs. Williams had bought pieces of furniture and appliances from the Walker-Thomas Furniture Company. The total cost of all her purchases was $1800. Over the years she had paid a total of $1600, and she still owed $200. Every time Mrs. Williams bought something at the store, she signed a contract which said that until she paid the store the full amount due, the store still owned all those things. If she ever defaulted, or failed to pay her installments on time, the store could take back everything she had ever bought there.

Mrs. Williams did not have a job, but she had been receiving public assistance payments of $218 each month to support her and her children. That was all the money she had. The store was aware of this fact.

On May 12, 1962, Mrs. Williams bought a stereo set for $515. She failed to make her first payment, and the store sought to take back not only the stereo set but also everything else she had ever bought there, even though she had paid $1600 for these items over the years.

Decision:

The trial court said that the store could repossess all the items, because the contract Mrs. Williams signed permitted it to do this. But Mrs. Williams appealed the case to a higher court, and a majority of the judges on the appeals court said the contract was unconscionable. They said there are several conditions which may make a contract unconscionable for the buyer. These may be summarized as follows:

1. The contract was very unfair to the buyer.

2. The buyer, for one reason or another, could not really choose whether or not to sign the contract.

3. The buyer did not have a fair chance to understand the contract, either because its important parts were hidden in fine print, or because of deception by the seller, or because the buyer did not have enough education. In this case the buyer was clearly very poor and the seller knew it, yet he sold her a $515 stereo set that he knew she could not afford. Under these circumstances, the contract provision permitting the company to take back everything Mrs. Williams had ever bought seemed very unfair. The majority of the judges on the appeals court condemned the co pany's conduct.

   But one judge did not agree. He felt that the appeals court should not interfere with this contract. The other judges, he said, were telling the store it should not have sold the expensive stereo to Mrs. Williams because its employees knew she was poor and could not afford to buy it. According to this judge, courts should not tell sellers to whom they can sell; nor should courts tell the stores what merchandise they can sell to poor people. Poor people have a hard time getting credit, and the majority decision in this case would make it even harder for them to get credit because sellers would be afraid that if they sold expensive goods to poor people, the courts would say the contracts are unconscionable. So sellers, the judge concluded, would just stop selling expensive things to poor people. And he did not want that to happen.

Case 2:

Fairbanks Morse & Co. v. Consolidated Fisheries Co.
190 F. 2d.817, (3d Cir. 1951)

A company that cooks and cans fish (the buyer) signed a contract to buy a large electrical generator for its factory. The contract said: "One——No. 1420 generator, 1136 kilowatts, 2400 volts, 3 wire." The buyer said that those words were the seller's promise that the generator would produce 1136 kilowatts of electricity. He complained that the generator only produced 900 kilowatts of electricity, which was not enough for his factory. He sued the seller. The seller told the court that the words "1136 kilowatts" in the contract were not a promise that the generator would produce that much electricity. He said that it was just a way of identifying model No. 1420, and that he had not promised that the generator would produce 1136 kilowatts.

Decision:

The court agreed with the buyer and declared he could recover from the seller. According to the judges, the contract stated exactly what the seller promised to deliver. It was a description of the merchandise. The buyer had a right to rely on the description and to expect the seller to deliver a generator like the one described in the contract. If the seller had not said it was a 1136 kilowatt generator, the buyer probably would not have bought it, because he would have known that it could not do the job in his factory. If the court had said that this was not a promise which the seller had to keep, it would have made a vital part of the agreement meaningless.

O. VOCABULARY/CONCEPT LIST:

1. Better Business Bureau: an organization which compiles and disseminates information about businesses and their dealings with consumers.
2. Contract: a promisory agreement either oral or written between two or more people that creates, modifies, or destroys a legal relation. A contract is composed of an offer, acceptance, and consideration.
3. Warranty: an obligation owed by the seller to the buyer to the effect that the product is fit for use.
4. Lease: A contract for the use of something but not for its ownership.

5. Option: A contract in which one person pays money for the right to buy something from or sell something to another person at a certain price and within a certain time period.

6. Unconscionability: Sales practices that are so greatly unfair that a court will not permit them.

7. Caveat Emptor: "Let the buyer beware." Common law rule for consumer affairs, has been greatly weakened by recent case laws and statutes.

8. Repossession: taking back something sold because payments have not been made.

9. Consumer: a person who buys goods or services from another.

10. Default: failure to perform a legal duty, observe a promise, or take care of an obligation. Default occurs when a consumer misses a payment on his loan or sales contract.

11. Puffing: an expression of opinion by a seller which is not made as a representation of fact. It is in essence an exaggeration or vague opinion that a buyer should know better than to depend on.

12. Bait and Switch: Advertising one item to get people to come into a store and then persuading them to buy a different one.

WAYS OF THE LAW

LESSON 12

CIVIL LAW

(WHAT REALLY HAPPENED)

LESSON 12

CIVIL LAW (WHAT REALLY HAPPENED?)

I. OBJECTIVES:

Students will understand what a tort is and what the legal ramifications of such a civil wrong are.

Students will gain an idea of what it's like to serve on a jury.

II. LESSON CONTENT:

This program opens in a restaurant where the last customers are finishing up their meal and the owner is balancing the cash register. A young girl with the family requests to be excused. On her way back from the restroom she and the waitress collide. Both are burned by scalding coffee. The girl's father slaps the waitress and says bad things about her. The waitress's boyfriend pulls the father off the waitress only to be stabbed with a fork by him. Finally, the restaurant owner and another customer subdue the father and boyfriend.

The restaurant owner, the waitress and her boyfriend, and the family each obtain legal representation. First each of the clients recaps what happened from their own point of view. Then they are all informed of why they can sue another party or why they will be sued by another party. As to who recovers what from whom, well that is left up to you and your class to decide. After all, that is exactly what you will be expected to do if you serve on a jury.

III. UTILIZATION

A. Invite a plaintiff's attorney to your classroom to discuss civil law. Ask him to assist you in staging a mock trial at which the situation portrayed in this program is utilized. Appoint a judge, jury, and three lawyers.

Then select the witnesses from your class.

B. Invite an attorney who represents insurance companies to your class to discuss civil law from his perspective.

C. Visit your local court of common pleas and interview the personnel there. Also watch a civil trial. You can probably coordinate this through the local clerk of court.

D. Visit your local magistrate or invite him to your class to discuss civil litigation involving $500.00 or less. He has jurisdiction over this type of case.

E. Ask a plaintiff's lawyer and a lawyer for an insurance company to demonstrate how they would go about settling a case.

F. Assign two of your students to act as attorneys and settle one of the causes of action brought out in the program.

G. Write the S. C. Industrial Commission at 1800 St. Julian Place, Columbia, S. C. 29204. Request that a member of the commission or some of its personnel visit your classroom to discuss workmen's compensation. Also ask for any printed material available. From our program Cathy Craut's workmen's compensation claim would be decided by this commission.

H. Issues for discussion:

1. § 15-75-30. Malicious injury to property by minor.

> When any unmarried minor under the age of seventeen years and living with his parent shall maliciously and intionally destroy, damage or steal property, real, personal or mixed, the owner of such property shall be entitled to recover from such parent of such minor actual damages in a civil action court of competent jurisdiction in an amount not exceeding one thousand dollars; provided, however, that nothing herein contained shall in any way limit the application of the family purpose doctrine.
> HISTORY: 1962 Code §10-2595; 1965 (54) 175.

Should parents also be responsible for the simple negligence of their children? Gross negligence? Recklessness? Wilfull misconduct causing personal harm?

2. § 283. Rest. Torts 2d. Conduct of a Reasonable Man:

The Standard Unless the actor is a child, the standard of conduct to which he must conform to avoid being negligent is that of a reasonable man under like circumstances.

Discuss the reasonable man standard and how it should be applied.

3. § 283 A. Children.

If the actor is a child, the standard of conduct to which he must conform to avoid being negligent is that of a reasonable person of like age, intelligence, and experience under like circumstances.

Apply this section to the actions of Elizabeth, the little girl who gets burned in the program.

4. If you see a person drowning or about to die or receive serious bodily injury, what should you do?

   a. You have no duty to come to his rescue.

   b. If you do you are held to the reasonable man standard and if through lack of due care you worsen the situation, you may be sued.

   Discuss the ramifications of these facts.

5. Are too many people sueing each other? What effect does this have on our society?

6. How should handicapped or blind individuals be judged when evaluating whether or not they are negligent?

7. What standard should be used to judge the insane defendant accused of negligence?

I. Divide your class into six mini juries. Assign each jury the task of reaching a judgment on the following causes of action. Juries should make whatever assumptions as to amount of damages that are necessary.

1. Waitress Cathy Craut v. Customer Mr. Cooper for
   a) the torts, assult and battery
   b) the tort, slander.

2. Waitress Cathy Craut v. Little Girl Elizabeth Cooper for the tort, negligence.

3. Boyfriend Tom v. Customer Mr. Cooper for the tort, Assault and battery.

4. Little girl and her Parents the Coopers v. Waitress for the tort negligence.

5. Little girl and her Parents v. Restaurant owner, Mr. Sloan for the tort negligence. Theory of recovery Respondeat superior.

6. Customer, Mr. Cooper v. Boyfriend, Tom for the tort, Assualt and battery.

J. Correlative Literature:

Injuries and Remedies, Cases and Materials on Tort Law and Alternatives, Marc A. Franklin, Mineola, N.Y. The foundation Press, Inc. 1971.

The Lawsuit Legal Reasoning and Civil Procedure. Xerox Education Publications, Education Center, Columbus, Ohio 43216

Civil Procedure
Gilbert Law Summaries
14415 So. Main Street
Gardena, California 90248

Civil Justice (Living Law)
Scholastic Book Services
50 West 44th Street
New York, N.Y. 10036

K. Interesting Cases and Statutes:

1. S. C. Code § 15-75-30. Malicious injury to property by minor.

When any unmarried minor under the age of seventeen years and living with his parent shall maliciously and intentionally destroy, damage or steal property, real, personal or mixed, the owner of such property shall be entitled to recover from such parent of such minor actual damages in a civil action court of competent jurisdiction in an amount not exceeding one thousand dollars; provided, however, that nothing herin contained shall in any way limit the application of the family purpose doctrine.
HISTORY: 1962 Code § 10-2595; 1965 (54) 175.

2. Restatement of the Law: Torts 2d, Vol. 2, American Law Institute Publishers, St. Paul, Minnesota, 1965

§ 283. Conduct of a Reasonable Man: The Standard

Unless the actor is a child, the standard of conduct to which he must conform to avoid being negligent is that of a reasonable man under like circumstances.

§ 283 A. Children

If the actor is a child, the standard of conduct to which he must conform to avoid being negligent is that of a reasonable person of like age, intelligence, and experience under like circumstances

§ 283 B. Mental Deficiency

Unless the actor is a child, his insanity or other mental deficiency does not relieve the actor from liability for conduct which does not conform to the standard of a reasonable man under like circumstances.

3. See S. C. Code § 42-1-10 — § 42-19-10 for Workmen's Compensation Statutes.

4. Anderson v. Ballenger, 164 S. C. 313, 166 S.C. 44. (1932) "Negligence is failure to exercise due care while 'gross negligence' is failure to exercise slight care."

5. Horne v. Atlantic Coastline Ry. Co.
181 SE 642, 177 S.C. 461

"Contributory negligence is want of ordinary care on part of a person injured by actionable negligence of another, combining and concurring with that negligence, and contributing to the injury as a proximate cause thereof, without which the injury, would not have occurred."

6. Corpus Juris Secundum
Vol. 67 § 123 (a)

"As a general rule, the mere relationship of parent and child does not impose on the parent liability for torts of the child."

7. Ingle v. Duneau Mills, 204 S. C. 505, 30 S.E. 2d 301 (1944)

"Workmen's Compensation, except specific benefits and that allowed for disfigurement under the present law, is for loss or impairment of capacity to obtain employment and earn wages."

8. Mason v. Southern Ry. Co. 36 S. E. 440, 58 S.C. 70 (1900).

"While an infant 16 months old may be technically a trespasser, he cannot be guilty of contributory negligence."

9. Chitwood v. Chitwood, 156 S.E. 179, 159 S.C. 109 (1930)

"Test in determining whether child is contributorily negligent is whether it acted as a child of its age, capacity, descretion, knowledge and experience--would ordinarily have acted under similar circumstances."

10. Dorais v. Paquin 304 A. 2d. 369

"The Normal standard of care required of children for their own protection and protection of others is that which it is reasonable to expect of children of like age, intelligence and experience under similar circumstances.

Children generally do not have same capacity to perceive, appreciate and avoid dangerous situation which is possessed by ordinary, prudent adult.

There is no fixed age when infants are suddenly bound to exercise same degree of care as adults.

Once youth's intelligence, experience and judgment mature to point where his capacity to perceive, appreciate and avoid situations involving unreasonable risk of harm to himself or others approximates capacity of adult, youth will be held to adult standard of care.

The closer child comes to majority, and the more common and obvious the risk, the more likely it is that youth will be held to adult standard of care."

11. See "Contributory Negligence of Children", 18 South Carolina Law Review 648 (1966).

Note: For assistance in procuring this article and other Law library materials write:

University of South Carolina
Coleman Karish Law Library
U. S. C. Law Center
Columbia, South CArolina, 29208

12. "Negligence," 29 Harv.L.Rev. 40 (1915),

The reasonableness of a given risk may depend upon the following five factors:

(1) The magnitude of the risk. A risk is more likely to be unreasonable the greater it is.
(2) The value or importance of that which is exposed to the risk, which is the object that the law desires to protect, and may be called the principal object. The reasonableness of a risk means its reasonableness with respect to the principal object.

(3) A person who takes a risk of injuring the principal object usually does so because he has some reason of his own for such conduct,—is pursuing some object of his own. This may be called the collateral object. In some cases, at least, the value or importance of the collateral object is properly to be considered in deciding upon the reasonableness of the risk.

(4) The probability that the collateral object will be attained by the conduct which involves risk to the principal; the utility of the risk.

(5) The probability that the collateral object would not have been attained without taking the risk; the necessity of the risk.

13. In Reiszel v. Fontana, 35 App.Div.2d 74, 312 N.Y.S.2d 988 (1970), a 17-year-old motorist collided with an eleven-year-old bicyclist at the entrance to a shopping center. The court held that the trial judge should have charged that the defendant-driver was to be judged by an adult standard while the plaintiff bicyclist should be judged by the standard of a "reasonably prudent eleven-year-old." Is that consistent? What if the eleven-year-old bicyclist had collided with, and hurt, a seven-year-old skater?

L. VOCABULARY/CONCEPT LIST:

1. Tort - a civil wrong done to another person. A Tort consists of a Legal duty owed by one person to another, a violation of that duty and damage as the direct result.

2. Vicarious liability- indirect legal responsibility.

3. Scope of Employment - An action of the general sort a person was employed to do, even if not exactly what the employer wants.

4. Guardian ad litem - one who is appointed by a court to take care of another person's interests during a lawsuit involving that person.

5. Civil Action - Every lawsuit other than a criminal proceeding; a lawsuit that is brought to enforce a right or gain payment for a wrong, rather than a court action involving the government trying to punish a crime. A lawsuit brought by one person against another.

6. Respondeat Superior - a legal rule that an employer is responsible for the actions of an employee done in the course of employment.

7. frolic and detour - An employee's act that has nothing to do with what he or she is employed to do.

8. Default - Failure to take a required step in a lawsuit; for example: to file a paper on time.

9. Negligence - Failure to exercise a reasonable or ordinary amount of care in a situation that causes harm to someone or something.

10. Contributory negligence - Negligent conduct by a person who was harmed by another person's negligence.

11. Slander - speaking false and malicious words that injure another person's reputation , business, or property rights.

WAYS OF THE LAW

LESSON 13

ENVIRONMENTAL LAW

Lesson 13

Environmental Law

I. OBJECTIVES:

Students will be cognizant of the Environmental Law issues they must face.

II. CONTENT OF LESSON:

This program and or lesson guide will concern itself with the important Environmental Law issues. Those issues include hazardous wastes, nuclear power, noise pollution, air pollution, water pollution, oil and gas exploration and tide lands legislation.

III. UTILIZATION

Before the Telecast:

A. Have your students become familiar with the vocabulary/concept list.

B. Have your students bring in magazine & newspaper articles concerning the environment. Xerox the articles and discuss them with your students. Make a collage of the headlines and pictures.

After the Telecast:

A. Assume you are the highway commissioner in your state considering building a new highway with federal funds, this of course, would require an environmental impact statement (see 42 USC § 4321 et seq.) Divide your class into two groups, one to decide reasons for the project and one to decide reasons against the project. Write the reasons on the board and have the class vote on whether or not to build the highway.

Possible reasons For:

Faster flow of traffic, less congestion on city streets, some run down housing would be torn down, fewer city children injured by cars

on city streets, and more business in the city because of easier access to city.

Possible Reasons Against:

More deaths through car accidents on new highway because of increased speed, more air pollution because of an increase in the number of cars and trucks, loss of parkland and recreational open space if any park is on the route, and people will have no place to live if houses are torn down since housing is in short supply.

B. Role Play

1. Devide your class into three groups. Each is a research committee for a congressman. Group One is to write a Law which would reduce home fuel consumption and be equitable to all sectors of society.

Group Two is to write the enforcement provisions necessary to reduce home energy use.

Group Three is to write a Law which restricts the use of personal autos to reduce pollution and excess energy use.

2. Have your entire class criticize each law.

C. Survey your class and then have your class survey your local automobile dealers on the following questions:

1. Should the government limit the horsepower of cars?
2. Should better gas mileage be a requirement of all new cars?
3. Should advertising be limited to compact cars?
4. What changes should and could be made in the automobile industry to help reduce energy consumption?

D. Plan an Environmental Awareness Day at your school with pro and anti nuclear speakers. Business, industrial and conservation leaders also should be invited. These speakers could conduct workshops on

solar power, wind power, etc. Your students could prepare special projects in environmental law, energy conservation, etc.

E. Values clarification exercise:

Ask your students to rank the following in order of importance. Then discuss the top five vote getters. Scale 1 = most; 15 = least.

_____Pure Water

_____Clean Air

_____Reduction in noise level

_____Conservation of Natural Resources

_____Safe pollution free Abundant Energy

_____Development at all costs

_____An understanding of ecology

_____Elimination of Litter

_____Stabilized population growth

_____Refrain from using pesticides

_____Rational Land Usage

_____Elimination of Nuclear Power Plants

_____A sensitivity to one's surroundings -(environmental awareness)

F. Case Study:

1. Xerox the Tisdale vs. South Carolina Coastal Council case description and hand it out to your students. Give them ten minutes to read it over.
2. After they complete the reading, devide the class into three groups. Group One will represent Mrs. Tisdale and Group Two will represent the South Carolina Coastal Council. Group Three consisting of no more than six students will be the jury and will render a decision in the case.
3. The students in Groups One & Two should have around ten minutes to prepare their client's case and elect a group speaker who will present their side to the jury.
4. Have the jury conduct its deliberations in front of the class and render a decision.
5. After the jury has rendered a verdict read to the class the actual decision of the circuit court:

   The 15th Circuit Court of South Carolina, meeting in Georgetown, ruled against Mrs. Tisdale. Judge R. K. Anderson said the Coastal Council's decision was a legitimate exercise of the police power and did not constitute a taking. The Judge ruled that the policy of the Council to protect marshland is legitimate because it does not seek to create new public benefits, but only to maintain what already exists.

   If the Council had been trying to create new public benefits it should have used the power of eminent domain.

   The court also held that Mrs. Tisdale did have some reasonable remaining uses of her land left. Although Mrs. Tisdale argued that she was deprived of the only existing practical use, the Judge disagreed. He wrote," I do not believe that the term "existing practical use"... was intended to refer to the most economically advantageous use." While the use of the property for a dock or a parking lot might not be what Mrs. Tisdale wanted, such

uses are still permitted and are reasonable. Thus, the court ruled against Mrs. Tisdale.

Student Reading Handout:

TISDALE VS. THE SOUTH CAROLINA COASTAL COUNCIL

In 1969, Mrs. Margaret Tisdale of Andrews, South Caroina, purchased three lots of marshland on the south end of Pawleys Island. Mrs. Tisdale planned to use one of the lots, 63 feet by 40 feet, to build a small beach cottage after she retired from public school teaching. Before she could begin construction, however, she first had to receive the approval of the South Carolina Coastal Council.

The Coastal Council was created in 1977 to control development in "critical areas" of the coast. Marsh was included in this category and any proposed construction first had to receive a permit from the Coastal Council.

In November, 1977, Mrs. Tisdale requested a permit from the Council to fill a portion of her marsh lot. The Council denied Mrs. Tisdale a permit. The Council told Mrs. Tisdale that the marsh was a valuable natural resource that benefits all citizens of the state. To allow her to create a residential lot strictly for private gain would remove the public's right to continue to benefit from this area. Further, the Council argued, filling in this plot could cause erosion damage for nearby property owners. Finally, the Council noted that this land had other uses which would be permitted. A dock and pierhead could be built; a 30 foot strip of the property which bordered the road could be cleared for parking of cars and recreational vehicles.

Mrs. Tisdale brought suit against the Coastal Council claiming that the decision so restricted her use of the land that it represented a "taking" of her property. Mrs. Tisdale said the property would only be of value unless filling took place. She also argued that she was filling in such a small amount of the total marsh area on Pawleys Island that her project would not affect the benefits the public received from the marshlands. Mrs. Tisdale asked that the Council pay her the sum of $35,000 for "taking" her property.

G. Issues For Discussion:

1. Mr. Landscape and Mr. Earthday live next door to each other. Mr. Landscape's pine trees shade Mr. Earthday's solar panels. Should Mr. Earthday be able to force Mr. Landscape to cut his pine trees in order to have access to the sun's energy?

2. Which is more important short term economic growth or long range protection of the environment?

3. How much consideration should be given to future generations when we make decisions today which deplete natural resources.

4. Should nuclear power be expanded or abandoned? Discuss dangers, benefits, and alternatives. Research maybe required.

5. Are we going to have to learn to live with less energy and fewer consumer goods?

6. Who should pay for the safe pollution free disposal of hazardous chemical wastes, the producer of the product, the consumers of the product through price increases or the taxpayers through a government program?

7. South Carolina receives around 50% of the low level nuclear waste generated in the United States for storage. Since, there are 49 other states is this fair?

8. If a stream has been polluted by chemical "X" and it cannot be determined which company is guilty, who should pay to clean up the stream, the taxpayers through the government or company Y which would like to begin producing chemical X.

9. Discuss strip mining in the context of quick economic development versus long term damage to the environment.

10. As a deterrant to inductrial pollution should industrial air and water polluters be required to pay fines? This system of pollution deterrance is used in some European countries.

11. Should National forests be managed to produce timber or should they be left as natural wilderness.

12. Should Nuclear generating facilities be required to dispose of their own waste or should dumping sites such as the ones in S. C. be set up to dispose of it all?

13. How much should the fine be for littering?

14. What is the best way to instill respect for the environment among people. Can laws force respect or is there another way?

H. Have your students list as many sources of energy which are alternatives to oil consumption as they can. Devide your class into that many groups. Each group should prepare a description of the energy source and list the pros and cons involved in its development and use. Also students should prepare a list of anticipated legal issues which could arise from the development and use of the energy source.

I. Contact the following resources for speakers or printed information.

1. South Carolina Department of Health and Environmental Control
   Office of Public Affairs
   (or Speakers Bureau)
   2600 Bull Street
   Columbia, South Carolina 29201

2. Contact your Local Utility Company and request information and a speaker.

3. Sierra Club
   2329 Devine Street
   Columbia, S. C. 29205

4. South Carolina Environmental Coalition
   P. O. Box 5761
   Columbia, SC 29250

5. Columbia Audobon Society
   P. O. Box 5923
   Columbia, SC 29250

6. National Solar Heating and Cooling Information Center
   P. O. Box 1607
   Rockville, MD 20850
   Phone: 1-800-523-2929

7. S. C. Solar Energy Group
   12 Fairbranch Court
   Columbia, SC 29210

8. S. C. Wildlife Department
   Education Section
   P. O. Box 167
   Columbia, SC 29202

9. S. C. Coastal Council
   Summerall Center
   Public Information Office
   19 Hagood St., Suite 802
   Charleston, SC 29403

10. Contact your Local Chamber of Commerce or any local business or industrial leader.

11. Office of the Governor
    Division of Natural Resources,
    Room 304
    1205 Pendleton Street
    Columbia, SC 29201

12. S. C. Water Resources Commission
    3830 Forest Drive
    P. O. Box 4515
    Columbia, S. C. 29240

13. S. C. Museum Commission
Curator of Natural History
Suite 300
P. O. Box 11296
Columbia, SC 29211

14. Department of Parks, Recreation and Tourism
1205 Pendleton St.
Suite 113
Columbia, SC 29201

15. Office of the Governor
Energy Management Office
Public Information
1122 Lady Street
Suite 1130
SCN Building
Columbia, SC 29201

16. Environmental Education Association
P. O. Box 11175
Columbia, SC 29211

17.a. Environmental Protection Agency
Public Information
1129 20th Street NW
Washington, DC 20013

b. Environmental Protection Agency
Public Information
345 Courtland St., NE
Atlanta, GA 30013

18. S. C. Department of Highways and Public Transportation
Public Information and Environmental Program Coordinator
P. O. Box 191
Columbia, S. C.29202

19. For a list of Local, State and National Environmental Education Resources contact Environmental Education Consultant
S. C. Department of Education
803 Rutledge Building
Columbia, S. C. 29201

J. Have some of your students who are interested in hunting research South Carolina hunting laws and report on them. They should pay close attention to "Slob Hunters" who give hunters in general a bad name and ways to combat slob hunting.

K. Correlative Literature

Environmental Quality Law
A South Carolina Casebook
McCleod, Mahan, Brookshire
S. C. Department of Health and Environmental Control

Environmental Law
Oscar S. Gray
The Bureau of National Affairs
Washington, DC

Street Law
A Course In Practical Law
National Street Law Institute
West Publishing Co.
St. Paul, Minn.

S. C. Supplement to Coastal Problems and Resource Management
S. C. Department of Education and
S. C. Coastal Council
Charleston, South Carolina

Of Democracy Truth and Courage
Studies of Environmental Action
R. Thomas Tanner
Office of Education
U. S. Department of Health Education & Welfare

"Our Polluted World"
Xerox Education Publications
1250 Fairwood Avenue
Columbus, Ohio 43216

L. Interesting Statutes:

1. CLEAN AIR ACT 42 U.S.C. § 7401

§ 7401. Congressional findings and declaration of purpose

(a) The Congress finds —

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

(b) The purposes of this subchapter are —

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution control programs.

2. FEDERAL WATER POLLUTION CONTROL ACT 33 U.S.C.§1251

§ 1251. Congressional declaration of goals and policy

(a) The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order the achieve this objective it is hereby declared that, consistent with the provisions of this chapter ——

(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State; and

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans.

(b) It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is the policy of Congress that the States manage the construction grant program under this chapter and implement the permit programs under sections 1342 and 1344 of this title. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution, and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction and elimination of pollution.

(c) It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the

fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

(d) Except as otherwise expressly provided in this chapter, the Administrator of the Environmental Protection Agency (hereinafter in this chapter called "Administrator") shall administer this chapter.

(e) Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

(f) It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

(g) It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this chapter. It is the further policy of Congress that nothing in this chapter shall be construed to supersede or abrogate rights of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

3. COASTAL ZONE MANAGEMENT ACT 16 U.S.C. § 1451

§ 1451. Congressional findings

The Congress finds that —

(a) There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone;

(b) The coastal zone is rich in a variety of natural, commercial, recreational, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation;

(c) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources. wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion;

(d) The coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations;

(e) Important ecological, cultural, historic, and esthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost;

(f) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values;

(g) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate; and

(h) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

§ 1452. Congressional declaration of policy

The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and where possible, to restore or enhance, the resource of the Nation's coastal zone for this and succeeding generations, (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purposes of this chapter, and (d) to encourage the participation of the public, of Federal, state, and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental problems.

4.§ 48 — 39 — 40. CREATION OF SOUTH CAROLINA COASTAL COUNCIL: MEMBERS: TERMS.

(A) There is herby created the South Carolina Coastal Council which shall consist of eighteen members as follows: Eight members, one from each coastal zone county, to be appointed by the local county governing body; six members, one from each of the congressional districts of the State, to be elected by a majority vote of the members of the House of Representatives and the Senate representing the counties in such district, each such House or Senate member to have one vote; and the following legislative members who shall serve ex officio: Two state Senators, one to be appointed by the President of the Senate and one to be elected by the Senate Fish, Game and Forestry Committee; and two members of the House of Representatives to be appointed by the Speaker of the House. The Council shall elect a chairman, vice-chairman and such other officers as it deems necessary.

(B) Terms of legislative members shall be coterminous with their terms as members of the General Assembly. Terms of all non-legislative members shall be for four years and until successors are appointed and qualify, except that of those initially appointed three of the members appointed by county governing bodies and two members from congressional districts shall serve terms of two years only as determined by lot at the first meeting of the Council. Vacancies shall be filled in the original manner of selection for the unexpired term.

§ 48 — 39 — 50. POWERS AND DUTIES OF COUNCIL.

The Council shall have the following powers and duties:

(A) To employ the CCPS consisting of, but not limited to, the following professional members: An administrator and other staff members to include those having expertise in biology, civil and hydrological engineering, planning, environmental engineering and environmental law.

(B) To apply for, accept and expend financial assistance from public and private sources in support of activities undertaken pursuant to this chapter and the Federal Coastal Zone Management Act of 1972.

(C) To undertake the related programs necessary to develop and recommend to the Governor and the General Assembly a comprehensive program designed to promote the policies set forth in this chapter.

(D) To hold public hearings and related community forums and afford participation in the development of management programs to all interested citizens, local governments and relevant state and federal agencies, port authorities and other interested parties.

(E) To promulgate necessary rules and regulations to carry out the provisions of this chapter.

(F) To administer the provisions of this chapter and all rules, regulations and orders promulgated under it.

(G) To examine, modify, approve or deny applications for permits for activities covered by the provisions of this chapter.

(H) To revoke and suspend permits of persons who fail or refuse to carry out or comply with the terms and conditions of the permit.

(I) To enforce the provisions of this chapter and all rules and regulations promulgated by the Council and institute or cause to be instituted in courts of competent jurisdiction of legal proceedings to compel compliance with the provisions of this chapter.

(J) To manage estuarine and marine sanctuaries and regulate all activities therein, including the regulation of the use of the coastal waters located within the boundary of such sanctuary.

(K) To establish, control and administer pipeline corridors and locations of pipelines used for the transportation of any fuel on or in the critical areas.

(L) To direct and coordinate the beach and coastal shore erosion control activities among the various state and local governments.

(M) To implement the state policies declared by this chapter.

(N) To encourage and promote the cooperation and assistance of state agencies, coastal regional councils of government, local governments, federal agencies and other interested parties.

(O) To exercise all incidental powers necessary to carry out the provisions of this chapter.

(P) To coordinate the efforts of all public and private agencies and organizations engaged in the making ot tidal surveys, of the coastal zone of this State with the object of avoiding unnecessary duplication and overlapping.

(Q) To serve as a coordinating state agency for any program of tidal surveying conducted by the federal government.

(R) To develop uniform specifications and regulations for tidal surveying.

(S) To monitor, in coordination with the South Carolina Department of Wildlife and Marine Resources, the waters of the State for oil spills. If such Department observes an oil spill in such waters it shall immediately report such spill to the South Carolina Department of Health and Environmental Control, the United States Coast Guard and Environmental Protection Agency. This in no way negates the responsibility of the spiller to report a spill.

(T) To direct, in coordination with the South Carolina Department of Health and Environmental Control as the designated state agency to provide liaison to the regional response team, pursuant to Section 1510.23 of the National Contingency Plan, state supervised removal operations of oil discharged into the waters within the territorial jurisdiction of this State and entering such waters after being discharged elsewhere within the State, and to seek reimbursement from the National Contingency Fund for removal operations cost expended by it and all other agencies and political subdivisions including county, municipal and regional governmental entities in removing such oil as provided for in Section 311(C)(2) of the Federal Water Pollution Control Act.

(U) To act as advocate, where the Council deems such action appropriate, on behalf of any person who is granted a permit for a specific development by the Council but is denied a permit by a federal agency for the same specific development.

(V) To delegate any of its powers and duties to the CCPS.

§ 48—43—20. WASTE AND POLLUTION PROHIBITED.

The waste of oil and gas and the pollution of the water, air or land is prohibited.

5. S. C. HAZARDOUS WASTE MANAGEMENT ACT

§ 44—56—20. Definitions.

(1) "Board" Means the South Carolina Board of Health and Environmental Control which is charged with responsibility for implementation of the Hazardous Waste Management Act.

(2) "Commissioner" means the commissioner of the department or his authorized agent.

(3) "Department" means the Department of Health and Environmental Control, including personnel therof authorized by the board to act on behalf of the department or board.

(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

(5) "Generation" means the act or process of producing waster materials.

(6) The term "hazardous waste" means any waste, or combination of wastes, of a solid, liquid, contained gaseous, or semisolid form which because of its quantity, concentration, or physical, chemical, or infectious characteristics may in the judgment of the department:

a. cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or,

b. pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

Such wastes may include, but are not limited to, those which are toxic, corrosive, flammable, irritants, strong sensitizers, persistant in nature, assimilated or concentrated in tissue, or which generate pressure through decomposition, heat or other means.

The term does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows, or industrial discharges which are point sources subject to NPDES permits under the Federal Water Pollution Control Act or the Pollution Control Act of South Carolina or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954.

(7) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(8) "Manifest" means the form used for identifying the quantity, composition, or origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(9) "Permit" means the process by which the department can insure cognizance of, as well as control over the management of hazardous wastes.

(10) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years, in such manner as not to constitute disposal of such hazardous wastes.

(11) "Transport" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate treatment, storage or disposal.

(12) "Treatment" means any method, technique, or process, inclusing neutralization designed to change the phusical, chemical, or biological character or composition of any hazardous waste, so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, reduced in volume, or suitable for final disposal.

§ 44—56—50. POWERS OF COMMISSIONER

Notwithstanding any other provision of this chapter, the Commissioner, upon receipt of information that the storage, transportation, treatment or disposal of any waste may present an imminent and substantial hazard to the health of persons or to the environment, may take such action as he determines to be necessary to protect the health of such persons or the environment. The action the Commissioner may take may include, but is not limited to:

1. Issuing an order directing the operator of the treatment or disposal facility or site, or the custodian of the waste, which constitutes such hazard, to take such steps as are necessary to prevent the act or eliminate the practice which constitutes such hazard. Such action may include, with respect to a facility or site, permanent or temporary cessation of operation; and,

2. Requesting that the Attorney General commence an action enjoining such acts or practices. Upon a showing by the department that a person has engaged in such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

HAZARDOUS WASTES

§ 44—56—130. UNLAWFUL ACTS.

After the promulgation of the regulations required under §44-56-30:

1. It shall be unlawful for any person to generate, store, transport, treat, or dispose of hazardous wastes in this State without reporting such activity to the department as required by such regulations.
2. It shall be unlawful for any person to generate, store transport, treat, or dispose of hazardous wastes in this State without complying with the procedures described in such regulations.
3. It shall be unlawful for any person to fail to comply with this chapter and rules and regulations promulgated pursuant to this chapter; to fail to comply with any permit issued under this chapter; or to fail to comply with any order issued by the board, commissioner, or department.

M. VOCABULARY/CONCEPT LIST

1. N.E.P.A. - (42 U.S.C. § 4321 et.seq.)
   National Environmental Policy Act requires that environmental impact statements be filed whenever any major federal action is being considered which may significantly affect the quality of the human environment.

2. Environmental impact statement - a written document prepared by the federal agency involved in a project to explore and explain the good and bad effect of the proposed action.

3. Ecosystem - an ecological community considered together with the non-living factors of its environment as a unit.

4. Hazardous Waste - Waste which may cause an increase in deaths or serious illness or pose a substantial present or future hazard to human health or the environment.

5. Strip Mining - Mining close to the Earth's surface as opposed to deep mining. Strip mining leaves the area mined unusuable unless reclaimed.

6. Environment - the whole complex of climatic and biological factors that act upon an organism or an ecological community and ultimately determine its form and survival.

7. High Level Nuclear Waste - highly radioactive waste which is left over from a solid fuel element like uranium which is used to produce nuclear energy. This material remains radioactive for 25,000 years and must be stored so as to protect the environment during that time.

8. Low Level Nuclear Waste - medical and industrial equipment tools, clothing, etc. which comes in contact with highly radioactive material and becomes contaminated. This material remains radioactive for 30 years and must be stored so as to protect the environment during that time.

9. Stream Chanellization - the process of turning meandering streams into straight canals or ditches sometimes done for flood control. A practice criticized by many environmentalists.

10. Ecology - a branch of science concerned with the totality or pattern of relationships between organisms and their environment.

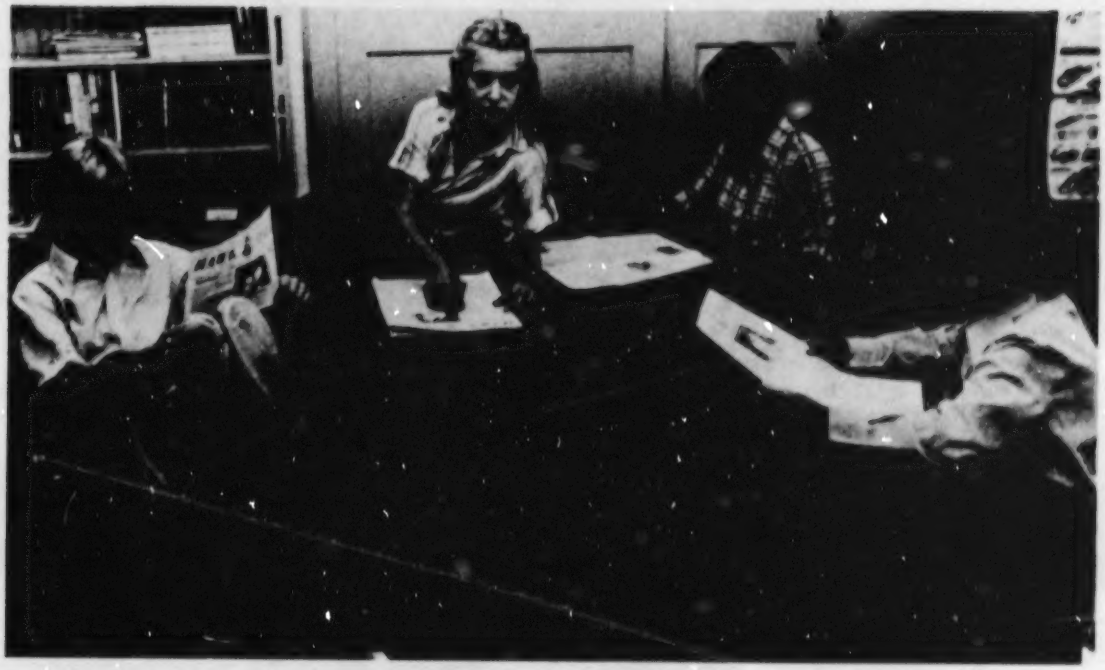
11. Alaska Lands Legislation - What to do with the last frontier? Congress has proposed a final classification of millions of acres of federal lands in Alaska. The federal government currently owns 86.7% of Alaska. How these lands are classified will determine the future use of Alaska's land and have a great effect on America as a whole.

WAYS OF THE LAW

LESSON 14

DUE PROCESS

(STUDENT RIGHTS AND RESPONSIBILITIES)



Lesson 14

Due Process (Student Rights and Responsibilities)

I. OBJECTIVES:

Students will understand what their Due Process rights and responsibilities at school are.

II. LESSON CONTENT

The program opens with students standing in a classroom saluting and pledging allegiance to the flag. One student who refuses to participate is sent from class. One of the two hosts for the show explains what student's rights are concerning the pledge of allegiance. He also explains that the lesson will examine student rights and responsibilities issue by issue. Subsequently, student rights and responsibilities are examined in relation to the following issues:

1. Religious activities sponsored by the school.
2. Voluntary religious activities.
3. Student rights to freedom of expression.
4. Student responsibility to follow prior submission rules for any written material they hand out.
5. Procedure to be followed when a student is suspended from school.
6. Corporal punishment.
7. Racial Discrimination.
8. Sexual Discrimination.
9. The rights of handicapped students.
10. School records and their availability to students.

III. UTILIZATION

Before the telecast:

A. Have your students become familiar with the vocabulary/concept list.

B. Ask your students whether minors enjoy the same constitutional rights as adults and whether or not they should. Inform them that the rights of juveniles and adults are not coextensive.

After the telecast:

A. Invite your school principal to class to discuss due process for students at your school.

B. List on the bulletin board the ten issues dealt with in the program. Have your class discuss what rights and responsibilities students have vis à vis each issue.

C. Invite an attorney to class to answer questions about due process for students.

D. Have your students bring in newspaper and magazine articles concerning vandalism, violence, drug and alcohol abuse at schools. Discuss the ramifications these events have for student rights and responsibilities.

E. Write and request a copy of "Your legal Rights and Responsibilities A Guide For Public School Students" from Department of Health Education And Welfare, Office of Human Development, Office of Youth Development, Washington, D. C. 20201.

F. Contact your local school board and inquire as to whether it has adopted a statement of student rights and responsibilities. If so, obtain a copy and make it available to your students.

G. Contact the South Carolina Department of Education to obtain a copy of their booklet on student rights and responsibilities.

Address: 1429 Senate St., Rutledge Building, Columbia, S. C. 29201

H. Divide your class into three groups or assign the task to three students. One group or student acts as the judge. The other two groups or students take opposite sides of the following issues: (Students should refer to the listed statutes and cases to back up their arguments.)

a. The football team at Peter Zenger High is 0-9 for the season. Uriah Unathletic, student newspaper editor, writes a scathing editorial critical of coach Gung Hohum. The principal forbids publication, calling the article Libelous. Unathletic prints and is suspended after a hearing.

After hearing arguments for both sides, the judge (s) should render a decision according to the Law as presented to them by the opposing sides and either reverse or uphold the principal's action.

b. Paul Pothead deals drugs at Purple Haze High School. When Juice hears rumors to this effect he marches to Paul's locker, unlocks it and removes two ounces of marijuana and two Playboy Magazines. He keeps the magazines and turns the pot over to the police and then suspends Paul for trafficking in drugs and having obscene material on campus. Paul does not receive a hearing. He is just sent home.

After hearing arguments backed up where possible with rules cases or statutes, the judge (s) should decide:

1) The legality of the search of Paul's locker.
2) Whether Playboy Magazine is obscene
3) Whether Paul can be sent home without a hearing.

I. Correlative Literature:

"Students' Rights, Responsibilities, and Resources in S. C."
South Carolina Department of Education.
1429 Senate Street. Rutledge Building
Columbia, South Carolina 29201

"Student Rights and Responsibilities"
S. C. American Civil Liberties Union
401 Columbia Building
Columbia, S. C. 29201

"Your Legal Rights and Responsibilities"
(A Guide for Public School Students)
Department of Health Education and Welfare
Office of Human Development
Office of Youth Development
Washington, D. C. 20201

"Statement of Student Rights and Responsibilities"
Richland County School District 1.
1616 Richland Street
Columbia, S. C. 29201

"Discipline and Due Process in the Schools" Fall 1977
"Law Goes to School" Fall, 1979
UpDate Magazine
American Bar Association
1155 East 50th Street
Chicago, Illinois 60637

J. Interesting Statutes, Cases, and Rules:

Statutes:

1. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise therof, or abridging the freedom of speech, or of the press; or the right of the people peacably to assemble and to petition the government for a redress of grievances."

First Amendment
U. S. Constitution

2. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Fourteenth Amendment
U. S. Constitution

3. "No person in the Unites States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance.

Title VI
1964 Civil Rights Act

4. Title IX of the Education Amendments of 1972 forbids schools from treating students of one sex differently than others, except separate classes for sex education are allowed. Sexual separation for participation and team play in contact sports is allowed and physical education classes may be separated into ability levels.

5. The Education of the Handicapped Act of 1970 establishes the right of a handicapped student to a free, Appropriate Public Education.

The Rehabilitation Act of 1973 insures that students shall solely on the basis of their handicap, not be excluded from, denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance.

6. The Family Educational Rights and Privacy Act of 1974 gives you, if you are 18 or are attending a school after graduating high school, the right to review and inspect your student records, the chance to challenge the record in a hearing to make sure they are not misleading or inaccurate.

Rules:

1. "The freedoms of speech and the press naturally do not release you from responsibility for their content. Anyone who communicates to a third party a false statement injurious to another's reputation or character, by either written (libel) or spoken (slander) word, is subject to both civil and criminal action."

"Student Rights, Responsibilities and Resources"
S. C. Department of Education

2. "You are protected from unreasonable searches and seizures.(Fourth Amendment). What is 'unreasonable' is determined by the courts in each case. As a general rule, your person or your property cannot be legally searched without a valid search warrant or your permission unless there is a reasonable belief an immediate threat exists in the form of a bomb, weapon, or other dangerous items. School lockers present a special situation, for which the courts and laws have not clearly delineated a definite rule. At present the best attitude would be to consider them school property, subject to search without a warrant."

"Student Rights, Responsibilities and Resources"
S. C. Department of Education

3. "Regardless of the length of the suspension or expulsion, you have the right to at least a hearing where you may present your side."

"Student Rights, Responsibilities and Resources"
S. C. Department of Education

Cases:

1. Brown v. Board of Education of Topeka 347 U.S. 483 (1954)

"Today, education is perhaps the most important function of state and local governments... It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."

Reason—Intangible factors involved in the separation of students of similar age and qualifications solely because of their race need very serious consideration. Such segregation of white and colored children in public schools has a detrimental effect upon the colored children, an impact that is greater when it has the sanction of law. It "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone . . . . We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the "Fourteenth Amendment."

2. Establishment of Religion

Epperson v. Arkansas 242 Ark.922, 416- S.W. 2d 322, 393 U.S. 97. (1968)

Arkansas had a Law which made it illegal to teach the theory of evolution. The Law was challenged by Epperson, an Arkansas School Teacher. The Supreme Court held:

" . .the Law must be stricken because of its conflict with the constitutional prohibition of state laws respecting an establishment of religion or prohibiting the free exercise thereof. The overriding fact is that Arkansas' law selects from the body of knowledge a particular segment which it proscribes for the sole reason that it is deemed to conflict with a particular religious doctrine; that is with a particular interpretation of the Book of Genesis by a particular religious group."

3. Freedom of Expression

Tinker v. Des Moines Independent Community School 393 U.S. 503 (1968)

Facts: Three public school students in Des Moines, Iowa, were suspended from school for wearing black armbands to protest the Government's policy in Vietnam. They took their case to court.

Held : "A prohibition against expression of opinion, without any evidence that the rule is necessary to avoid substantial interference with school discipline or the rights of others, is not permissable under the First and Fourteenth Amendments."....

"First Amendment rights are available to students, subject to application in light of the special characteristics of the school environment."

4. Ingraham v. Wright, 45 U.S.L.W. 4364 April 19, 1977

Issue: Is Corporal punishment cruel and unusual?

Held: No. The Eighth Amendment's prohibition against cruel and unusual punishment does not apply to questions of disciplining public schools—because it was designed to protect criminals in prison.

Issue: Does due process require notice and a hearing before corporal punishment may be administered?

Held: Due process prior to corporal punishment would require "time, personnel and the diversion of attention from normal pursuits," and educators might well abandon the use of such punishment to avoid the burden of complying with procedural requirements. The question of whether or not to continue corporal punishment in the schools is for Legislatures and school boards to decide,....

5. Freedom of the Press

Joyner v. Whiting 477 Fed 2d 456 (1973)

Facts: North Carolina Central University president withdrew funding from student newspaper which had segregationist editorial policy ("Is NCUU still a Black School?").

Issue: Did the president's action abridge the freedom of the press in violation of first Amendment?

Held: Yes. "Permanent withdrawal of funds from official student newspaper of predominantly Black state University was not an appropriate remedy for racial discrimination in staffing newspaper and accepting advertising, where evidence failed to disclose that the discriminatory staffing and advertising policies were inextricably related to news and editorial policy and editorial content of the paper; to comply with first Amendment, remedy to rectify the discrimination in staffing and advertising should be more narrowly drawn."

K. VOCABULARY/CONCEPT LIST

1. Due Process - a person should always have notice and a real chance to present his side in a legal dispute and no law or government procedure may be arbitrary or unfair.

2. Corporal Punishment - physical punishment (beating, etc.)

3. Fundamental Rights - Certain rights basic to every American(e.g. travel, privacy, free speech)

4. Student Responsibilities - duties shared by all students (e.g. duty not to interfere in the rights of others.)

5. Suspension - Prohibition of a student from entering the school, or school grounds (except for a prearranged conference with an administrator), attending any day or night school functions or riding a school bus.

6. Expulsion - Permanent prohibition of a student from entering the school or school grounds (except for a prearranged conference with an administrator), attending any day or night school functions or riding a school bus.

7. Prior Submission Rule - Rule requiring student to submit any written material which he intends to hand out on school grounds for the principal's approval. His decision, of course, may not be arbitrary and must be based on a fear that the material will substantially disrupt the operation of the school.

8. Obscene- Materials obscene if to average person, applying contemporary community standards, dominant theme of material taken as a whole appeals to prurient interests, if it is utterly without redeeming social importance, if it goes substantially beyond customary limits of candor in description or representation, if it is characterized by patent offensiveness, and if it is hard core pornography.

WAYS OF THE LAW

LESSON 15

OUR LEGAL SYSTEM

JUSTICE APTHUR J. GOLDBERG

JUDGE MATTHEW J. PERRY, JR.

WAYS OF THE LAW

Lesson 15

Our Legal System

I. OBJECTIVE:

Students will understand the roles and views of two of America's leading Legal personalities.

II. LESSON CONTENT

This program consists of interviews with two leading American Jurists both of whom have wide and varied experiences within the American legal system.

Arthur J. Goldberg has served as Secretary of Labor of the United States, 1961-62; Associate Justice of the United States Supreme Court, 1962-65; permanent Representative of the U. S. to the United Nations, 1965-68; U. S. Representative to the Belgrade Conference on Security and Cooperation in Europe, 1978. Justice Goldberg has been a senior partner of three law firms in Chicago, Washington and New York. He also has been general counsel for the Congress of Industrial Organizations and the United Steelworkers of America. He presently practices law in Washington, D. C.

Matthew J. Perry, Jr. is a veteran Civil Rights attorney who led the legal assault on segregation in South Carolina. He has served as legal counsel for the NAACP. When he was appointed to the

Military Court of Appeals in 1976, he became the first Black lawyer from the Deep South ever appointed to the Federal Bench. He presently serves as a judge on the Federal District Court in South Carolina.

III. Before the telecast:

A. Have your students become familiar with the biographies contained in the outline of the lesson content.

B. Have your students bring in newspaper and magazine articles concerning the Supreme Court and other Courts.

C. Have your students become familiar with the vocabulary/concept list.

After the telecast:

A. Discuss with your students the philosophy of each of the two interviewees. Ask them to agree or disagree with statements of the two men.

B. Discuss the magazine and newspaper articles brought in by your students.

C. Divide your class into discussion groups. Have each group list the pros and cons of our legal system. Combine the lists and put them on the board.

D. Issues for Discussion:

1. Our two interviewees are opponents of capital punishment. A majority of Americans disagree. How do you feel?
2. Is there too much emphasis on Human rights in America?
3. Should the fundamental rights of Americans be constantly expanding or can you think of times when those rights should

be curtailed? (Example: might our fundamental right to travel have to suffer in the wake of the energy crisis?)

4. Are our declared legal principles a working reality for all Americans?
5. Are we the most democratic country in the world? Why or why not? Who is more democratic? Less democratic?
6. Should judges have to answer to the people for their decision by having to stand for election?

7. Discuss this quote from Justice Goldberg: "In the age of Nuclear Weapons, the peaceful settlement of disputes is a practical necessity for the survival of mankind."
8. The Anglo-American common law system places a unique power among the judiciary. Does this afford a great opportunity for judicial tyranny?
9. Former Attorney General Griffin Bell has called the government bureaucracy "a prescription for societal suicide, saying it made him fearful of what lies ahead for the nation...and if the government is to remain viable", says Bell, "we must find ways to curb and then reduce the government bureaucracy. More staff invariably means more time in which to evolve more ideas about how to increase government control over the lives of Americans." Discuss.

E. VOCABULARY/CONCEPT LIST

1. Judicial Review - The court's power to declare a statute or a presidential action unconstitutional and to interpret laws.
2. Stare decisis - A legal rule that when a court has decided a case by applying a legal principle to a set of facts, that court should stick by that principle and apply it to all later cases with clearly similar facts unless there is a good strong reason not to. This Doctrine promotes fairness and reliability.

3. Common Law - The body of principles, originated, formulated, and administered in England because of the usages and customs of the people. In America it is relied on when there is no statutory law which governs.

4. Checks and Balances - Our government has three branches; the executive, the legislative, and the judiciary. Each branch can act to restrain the other.